166-303

166-533.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 127.

FREDERICK L. MANSON, APPELLANT,

vs.

CHARLES C. DUNCANSON.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 3, 1894.

(15,620.)

(15,620.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 127.

FREDERICK L. MANSON, APPELLANT,

vs.

CHARLES C. DUNCANSON.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	a	1
Transcript from supreme court of the District of Columbia	1	1
Caption	1	1
Bill of complaint	1	1
Exhibit M. No. 1—Complaint in case of Manson *vs.* Poulson, trustee, *et al*	8	8
No. 1A—Deed between Jas. W. Barker *et ux.*, Wm. L. Manson *et ux.*, and Wm. R. Woodward, August 2, 1862	10	10
No. 1B—Deed between Wm. L. Manson *et ux.* and Erastus Poulson, August 2, 1862	16	16
No. 1C—Deed between Wm. R. Woodward, James W. Barker, Sarah Jane Manson, and Erastus Poulson, August 2, 1865	19	19
No. 1D—Will of Sarah Margaret Jane Manson	22	21
Subpœna	23	23
Marshal's return	23	23
Answer	24	24

Judd & Detweiler, Printers, Washington, D. C., October 30, 1896.

	Original.	Print.
Exhibit A—Record in case of Manson *vs.* Poulson, trustee, *et al*	27	27
Complaint	27	27
Exhibit A—Will of Sarah Margaret Jane Manson	30	30
Copy of auditor's report	31	31
Subpœna	39	39
Order appointing commissioners	39	39
Commission in Philadelphia and answer	40	40
Commission in Kerrville, Texas, and answer	41	41
Answer of Poulson, trustee	42	42
Answer of Walters	42	42
Order appointing commissioners	43	43
Commission in Ft. Clark, Texas, and answer	43	43
Decree appointing W. P. Bell trustee, &c	45	45
Bond of W. P. Bell, trustee	45	45
Report of W. P. Bell, trustee	46	46
Order *nisi* on report of trustee	47	47
Publication of notice	48	48
Final decree confirming sale	48	48
Receipt for proceeds of sale	49	49
Replication	49	49
Assignment to secure fees of complainant's attorney	50	50
Evidence for complainant	50	50
Testimony of Frederick Louis Manson	51	51
Exhibit F. L. M. No. 1—Enlistment papers of F. L. Manson	74	74
No. 2—Letter of A. A. Birney to Frederick L. Manson, Oct. 8, 1892	76	76
No. 3—Deed from Woodward and Barker and Manson to Poulson, August 2, 1865 (omitted in printing per stipulation)	77	—
No. 4—Deed from Manson *et ux.* and Woodward to Poulson, August 2, 1862 (omitted in printing)	80	—
No. 5—Deed from Barker *et ux.* and Manson *et ux.* to Woodward, August 2, 1862 (omitted in printing)	83	—
Petition to recall witness, &c (" ")	89	—
Order suppressing deposition of Edward D. McLoughlin (" ")	93	—
Motion to limit time for defendant to take testimony (" ")	93	—
Motion to suppress deposition of F. L. Manson (" ")	94	—
Affidavit of John A. Sweeney (" ")	94	—
Order overruling motion of defendant to suppress deposition (" ")	95	—
Petition to suppress deposition of complainant (" ")	95	—
Affidavit of C. C. Duncanson (" ")	96	—
Affidavit of John A. Sweeney (" ")	97	—

	Original.	Print
Motion for security for costs.....(omitted in printing)..	98	—
Order overruling motion for security for costs.....(" ")..	98	—
Order dismissing petition to suppress deposition.....(" ")..	99	—
Order limiting time for defendant to take testimony.....(" ")..	99	—
Motion for leave to withdraw deposition of McLoughlin.....(" ")..	99	—
Order granting motion to withdraw deposition of McLoughlin.....(" ")..	100	—
Examiner's certificate.....(" ")..	100	—
Stipulation as to deposition of McLoughlin.....(" ")..	101	—
Evidence for defendant	101	77
Testimony of Edward D. McLaughlin	102	77
Exhibit E. McL. No. 1—Letter, Manson to McLoughlin, November 12, 1874	119	95
Letter, McLoughlin to Bell, November 21, 1874	120	95
Letter, Bell to McLoughlin, November 23, 1874	120	95
Exhibit E. McL. No. 2—Letter, Manson to Bell, November 12, 1874	120	95
Petition of complainant for order on examiner	121	96
Order on petition for order on examiner	123	98
Exhibit C. H. A. No. 1—Petition of Elizabeth G. Manson, administratrix, to orphans' court of Philadelphia in matter of estate of Sarah Jane Manson	123	99
Motion to require security for costs	124	100
Order overruling motion for security for costs	125	101
Motion to extend time to take testimony for defendant, &c.	125	101
Order to extend time to take testimony for defendant	126	102
Motion to extend time to take testimony for defendant, &c.	127	102
Order limiting time to take testimony	128	103
Evidence for complainant	128	103
Testimony of John Foley	130	105
John A. Sweeney	134	109
Exhibit R. L. W. No. 1—Muster-rolls	136	112
No. 2—Petition of Elizabeth G. Manson to orphans' court of Philadelphia in matter of estate of Sarah Jane Manson, &c.	137	112
Order to place cause on calendar for May term	141	116
Motion to extend time to take testimony for defendant	141	116
Order extending time to take testimony for defendant	142	117
Order to place cause on calendar for June term	142	117
Stipulation as to testimony of P. Donnery	142	118
Evidence for defendant	143	118
Testimony of James W. Barker	143	118
Charles Walter	148	123
Motion to set cause for hearing	153	128

	Original.	Print.
Order continuing motion to set cause for hearing	153	129
Final decree	154	129
Order for appeal to Court of Appeals	154	130
Order for citation on appeal	155	130
Citation and acceptance of service	155	130
Notice of motion for approval of bond	156	131
Bond on appeal	156	131
Clerk's certificate	157	132
Minutes of argument	158	133
Opinion	159	133
Final decree	164	142
Order allowing appeal, &c.	165	143
Order allowing appeal and fixing amount of bonds	166	143
Bond on appeal	167	143
Citation and acceptance of service of same	168	144
Clerk's certificate	169	144
Assignment of errors	170	145
Stipulation to omit part of record in printing	172	145

Court of Appeals, District of Columbia, September Term, 1893.

CHARLES C. DUNCANSON, Appellant,
vs.
FREDERICK L. MANSON. } No. 244.

Appeal from the supreme court of the District of Columbia.

Filed July 31, 1893.

1 In the Court of Appeals of the District of Columbia, September Term, 1893.

CHARLES C. DUNCANSON, Appellant,
vs.
FREDERICK L. MANSON. } No. 244.

Supreme Court of the District of Columbia.

FREDERICK L. MANSON, Complainant,
vs.
CHARLES C. DUNCANSON, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill of Complaint. Filed Jun- 20, 1892.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

To the honorable justice holding an equity court:

The bill of complaint of the above-named Frederick L. Manson respectfully represents as follows:

1. He is a citizen of the United States and resides in the State of Illinois, and brings this suit in his own right for the purpose of obtaining an order of this honorable court restraining and enjoining the defendant from receiving or applying for a certain Treasury draft for the sum of $17,000 now in the registry of this court, and for the further purpose of obtaining an order for the payment of

said money to the complainant, said sum being the proceeds of certain condemned real estate known as parcel numbered 15 in the condemnation proceedings numbered 361 on the docket of this court for District court business, of which said parcel the complainant was the owner by purchase, as will more fully hereinafter appear, said draft having been paid into the said registry in the course of said condemnation proceedings prosecuted for the purpose of
2 securing by the United States a site for a post-office in the city of Washington, in said District, in square No. 323.

2. The defendant is a resident of said District, and wrongfully and unlawfully pretends to be entitled to said money through and by virtue of a certain pretended chancery sale made in a certain proceeding hereinafter further mentioned, of which said proceeding the court had no jurisdiction, and all of which said proceedings was without authority of law and was null and void, as the complainant is advised and believes.

3. That one James W. Barker was on the 2d day of August, in the year of our Lord one thousand eight hundred and sixty-two, the owner in fee-simple of the real estate embraced in said parcel No. 15 subject to a certain deed of trust to secure a debt to one Margaret C. Barber hereinafter further mentioned, and being such owner, the said James W. Barker, by deed bearing date the said second day of August, 1862, between him, the said James W. Barker, and Sarah A. R., his wife, parties of the first part, one William L. Manson and Sarah Jane, his wife, of the second part, and one William R. Woodward, of the third part, conveyed to the said William R. Woodward, the real estate and premises embraced in said parcel No. 15, together with certain other premises in trust, to secure the said debt to Margaret C. Barber and to secure certain deferred purchase-money which the said Sarah Jane Manson was to pay for the said real estate and premises and other premises therein conveyed, and until default should be made in paying the same as specified to permit the said Sarah Jane Manson to occupy and enjoy the premises and receive the rents and profits thereof for her sole and separate use as provided and declared in a separate deed by said William L. and Sarah J. Manson of the same date, to wit, August second, 1862; and upon further trust in default of any of the payments provided for in said deed then to sell said premises and dispose of the proceeds of sale in a manner therein provided, but upon the payment of said purchase-money according to the provisions of said deed, then it is provided that the said Woodward shall convey said premises upon the trusts and for the purposes expressed and declared for the benefit of said Sarah Jane Manson in and by said other deed or declaration made by the said William L. Manson and Sarah Jane, his wife, bearing date therewith, as will more fully appear by reference to said deed as recorded in the land records of said District in Liber J. A. S., No. 219, fol. 391, a copy of said deed being herewith filed and made a part of this bill of complaint, marked "Exhibit M No. 1a."

And the plaintiff further says that the said William L. and Sarah Jane Manson cotemporaneously with the execution of the afore-

said deed and pursuant thereto executed another deed wherein they declared that after the full payment of the notes in the said deed mentioned and the discharge of the trusts concerning the same without a sale the said William R. Woodward should convey the said premises to one Erastus Poulson, as trustee, and that the said Erastus Poulson should thereupon stand seized of the said premises upon the following trust, to wit:

3 In trust for the said Sarah Jane Manson for and during her life and to permit her to occupy said premises and to receive the rents and profits thereof for her own sole and separate use, and upon further trust that it should be lawful for the said Sarah Jane Manson during her life to dispose of the premises either by sale or mortgage, said Poulson, trustee, to join therein, such disposition to be made by deed executed and acknowledged by said trustee and by Sarah Jane Manson, as if she were sole and unmarried; and in default of such sale or mortgage, or so far as the same should not extend, upon further trust for such person or persons and for such estate and in such parts, shares, and proportions as said Sarah Jane Manson might from time to time by any deed or instrument of writing or by her last will and testament under her hand a- seal limit, direct or appoint, give or devise, and in default of any such limitation, direction and appointment, gift or devise, "in trust for such child or children as she shall leave surviving her, and the issue of any deceased child or children equally share and share alike, such issue taking his, her, or their parent or parents' share, and for default of all such children or issue then in trust for the right heirs of the said Sarah Jane Manson forever," as will fully appear by reference to a copy of said deed, which is herewith filed and made a part of this bill of complaint, and marked "Exhibit M, No. 1b." Said deed is recorded in Liber J. A. S., No. 226, folio 21, of said land records.

And the plaintiff says that thereafter by a certain deed bearing date the second day of August, 1865, by and between the aforesaid William R. Woodward of the first part, said James W. Barker of the second part, said Sarah Jane Manson of the third part, and said Erastus Poulson of the fourth part, reciting the substance of the two deeds above mentioned and the purposes thereof, and further reciting in substance that the indebtedness secured by the first deed above mentioned had been fully satisfied, the aforesaid William R. Woodward for a sufficient consideration therein named and at the request of the said James W. Barker did release and convey to the said Erastus Poulson the aforesaid premises constituting said parcel No. 15 free from all said incumbrances; to have and to hold unto and to the use of the said Erastus Poulson free and discharged from the said debts, but in trust for the sole and separate use and benefit of the said Sarah Jane Manson exclusive of her husband, and upon the trusts and to and for the intents and purposes and subject to the powers expressed in and by the aforesaid deed secondly above mentioned and recorded in said Liber J. A. S., No. 226, at folio 21 of said land records, as will fully appear by reference to said deed as the same is recorded in Liber N. C. T., No. 61, at folio 3, a copy of

which is herewith filed and made a part of this bill of complaint, marked "Exhibit M, No. 1c."

4. And the complainant further avers that the said Sarah Jane Manson died in Andalusia, Bucks Co., in the State of Pennsylvania, on the fourth day of September, 1870, leaving her last will and testament, wherein she disposed of certain of her estate; which said last will was duly admitted to probate in the office of the 4 register for the probate of wills in said city of Philadelphia; but said Sarah Jane Manson did not by her said last will and testament make any disposition of said real estate as will fully appear by reference to a copy thereof, which is herewith filed and made a part of this bill of complaint and marked "Exhibit M, No. 1d." And the plaintiff avers that said Sarah Jane Manson did not dispose of said land parcel No. 15 or any part thereof by absolute sale or mortgage, nor did she by any deed or instrument of writing nor by her last will and testament under her hand — seal make any limitation, direction, appointment, gift, or devise of the same, but departed this life as aforesaid in default thereof.

5. And the plaintiff further avers that he and the said Cecelia Mulford Manson and the said William Henry Walters mentioned in said last will and testament of said Sarah Jane Manson were the children and the only children and heirs at law of said Sarah Jane Manson, and that the said Sarah Jane Manson left them and each of them her surviving; and the plaintiff says that the said Cecelia was his sister of the whole blood, and that said Walters was his brother of the half blood; and further, that upon the decease of said Sarah Jane Manson as aforesaid he and his said sister and his said brother became and were the owners and beneficiaries by purchase of said land constituting said parcel No. 15 under and by virtue of the aforesaid deeds.

6. And the plaintiff further says that afterwards, to wit, in the year 1874, the aforesaid William L. Manson filed in the supreme court of the District of Columbia a certain paper-writing purporting to be a bill of complaint in a certain proceeding numbered 3796 on the docket of equity causes in said court, and entitled "William L. Manson, complainant, *vs.* Erastus Poulson, trustee; Frederick L. Manson, William H. Walters, Cecelia M. Manson, defendants," a copy whereof is herewith filed, marked "Exhibit M. No. 1," and made a part of this bill of complaint as fully as if here set forth at length.

And the complainant says that the three deeds mentioned in the aforesaid proceeding, numbered 3796 as aforesaid, are the identical three deeds above set forth in this bill of complaint.

7. The plaintiff is advised and believes and he so avers that there is nothing set forth or stated in the aforesaid bill of complaint filed in said equity proceeding No. 3796 to give said court jurisdiction of the subject-matter thereof, or of any matter or person mentioned therein, and that said court had no jurisdiction to entertain said bill of complaint or to make any order therein except an order dismissing the same for want of jurisdiction; but said court did, inadvertently and without jurisdiction and without authority of law, as

the complainant is advised and believes, make an order for the sale of said premises embraced in said parcel No. 15, and did appoint one W. P. Bell trustee to sell and convey the same, and said Bell did, pursuant to said order, undertake to sell the same, and did execute a deed therefor to one Frederick Volk; and the plaintiff further says that the said Frederick Volk and his wife afterwards conveyed the same by deed with general warranty to one Louis Schmid, Edward Schmid, and Alexander Schmid, and the said Louis, Edward, and Alexander Schmid and their respective wives thereafter conveyed the same by deed with general warranty to the defendant Charles C. Duncanson, said deed bearing date June 21, 1890; and the said plaintiff avers that the said Duncanson now claims said $17,000 as the proceeds of said condemnation, as complainant is informed and believes, through, under, and by virtue of said last-mentioned deeds; and the plaintiff avers that said last-mentioned deeds and all the proceedings through, under, and by virtue of which they were made were null and void, and that none of the parties thereto had any title to or right whatsoever in said premises; and the plaintiff prays leave to refer to and read the several papers and proceedings in said cause in connection herewith as occasion may require.

8. And the plaintiff further says that under and by virtue of certain proceedings in said supreme court, begun on the 23rd day of October, 1890, for the condemnation of square No. 323 for a post-office site in the city of Washington, in said District, said proceeding being numbered 361, on district court docket No. 1, of said supreme court, the land and premises above mentioned and referred to as parcel No. 15, together with the rest of said square, was condemned for the purposes aforesaid, and the title thereto has become vested in the United States; and the value of said parcel No. 15 was duly appraised and reported to the said court at $17,000, and a U. S. Treasury draft for said sum was, on the 9th day of October, 1891, deposited by the Treasurer of the U. S. in the registry of this honorable court for the owner of said parcel, and is now in said registry, subject to the order of this court; and further, that said parcel No. 15 consists of the land described in the said bill of complaint mentioned herein in paragraph 6.

9. And the plaintiff further avers that he was in April, in the year 1873, while a minor under the age of 21 years, enlisted with the consent of his father, the said William L. Manson, in the fourth regiment of United States cavalry, and that he remained in the army until the year 1881, when he was honorably discharged; that during all of said time he was stationed at military posts in Texas and Kansas, and since his said discharge he has resided continuously in the States of Illinois and Kansas; that he is informed that the records of said equity cause show that a certain person assumed to act as guardian for him and filed an answer as such guardian in said equity proceeding No. 3796, but he avers that he never had any knowledge or information directly or indirectly concerning said answer or the filing thereof, or of any answer to be filed for him on his behalf, and that he never knew directly or in-

directly of the existence of said equity proceeding until the 15th of August, 1891, and he never until said 15th of August, 1891, had any information whatsoever of said condemnation proceeding; and he avers that he never knew of the existence of said three deeds mentioned in the above equity proceeding No. 3796, or either of them, nor did he have information of any kind concerning the interest they secure to him in said real estate until the said
6 15th day of August, 1891, when he was informed thereof by a firm of lawyers in Washington, D. C., theretofore unknown to him; and he further avers that upon learning of the existence of the record of said three deeds and of the claim of said Duncanson in the premises, he immediately employed counsel to protect his interest therein, and said counsel on the 17th day of August, 1891, begun proceedings in said district court to protect the complainant's said interests, and subsequently filed a petition in said condemnation proceeding in said district court, setting forth his title to said real estate as aforesaid and claiming said proceeds; and the plaintiff is informed and believes, and so avers, that the honorable justice holding said district court, upon consideration of said petition, was of opinion that he had not jurisdiction to decide any question as to the validity or invalidity of said equity proceedings No. 3796, or to decide any contested question between this plaintiff and said Duncanson as to their respective rights in the premises.

10. And the plaintiff further avers that his mother, the said Sarah Jane Manson, died seized of certain property in said city of Philadelphia and in Bucks county, Pennsylvania, and that after the death of his father, the said William L. Manson, in 1877, the complainant wrote to a lawyer in said city of Philadelphia, inquiring as to the disposition of the aforesaid property in Pennsylvania, but he was advised by said lawyer that all of said property had been sold; and the plaintiff avers that he never authorized any one to appear for him in any settlement of his mother's estate and never heard of any proceeding concerning the same.

11. And the plaintiff further says that he and his sister, said Cecelia, were the children of said William L. and Sarah Jane Manson, and that said Walters was a son of said Sarah Jane by a former husband; that his said sister remained at home with her father but a short time after the said enlistment of the complainant, but left home and sought her own livelihood; that the last he heard directly from his said sister was by a letter from her, bearing date in said city of Philadelphia, in 1878; that since he discovered the existence of the property interests in question he has twice been to the said city of Philadelphia in search of his sister and said brother, and he avers that he made diligent inquiry for them and sought information concerning them of every person he ever knew who is now living in said city, and he has been unable to obtain any information, directly or indirectly *or indirectly*, of there whereabouts or of the existence of his said sister since the year 1880 or of his said brother for several years prior thereto, and he believes that they are dead, and he avers upon information and belief that his said sister, Cecelia, and his said brother are long since dead and that they died

interstate, leaving the plaintiff their only next of kin and heir-at-law; and he further avers that in addition to the said personal inquiries he published in the Philadelphia newspapers an inquiry for his said sister, and that no response thereto has been received.

12. And the plaintiff further avers that no process was
7 served upon him or upon said Cecelia or upon said Walters in said equity cause No. 3796; that neither he nor said Cecelia appeared in said court or in said cause; that no order of publication was taken, made, or published against them or concerning them or either of them, and that no answer was filed by the plaintiff or by said Cecelia nor by any one for them or on their behalf by any person lawfully authorized so to do.

And the plaintiff avers that without the aid of a court of equity he is without remedy in the premises, as he is advised.

Prayers.

The plaintiff therefore prays as follows:

1. That this honorable court may make a decree declaring that — the above-mentioned paper, purporting to be a bill of complaint of William L. Manson, filed in the said supreme court, sitting in equity, in cause numbered 3796, there is no matter or thing of equity jurisdiction set forth or stated, and that the decree and order for the sale of the property therein described is null and void for want of jurisdiction of said court, and that all decrees, orders, and proceedings made and had in said equity cause are null and void for want of jurisdiction both of subject-matter and of parties.

2. That the deed executed by said W. P. Bell, as trustee as aforesaid, passed no title to said real estate, and that said deed and all deeds deraigning title therefrom or by, through, under, or by virtue of the aforesaid proceedings in equity No. 3796 are null and void and of no effect.

3. That the complainant was the legal and equitable owner of the said real estate constituting said parcel No. 15 at the time of the condemnation of the same as above set forth, and that he is entitled to the fund deposited in the registry of this court as the proceeds of said condemnation.

4. That said Charles C. Duncanson, his agents and attorneys, be restrained pending this suit from receiving said fund, and that they be perpetually enjoined from claiming or receiving the same.

5. And the plaintiff prays for process commanding the said Charles C. Duncanson to appear and answer the exigencies of this bill of complaint; and the plaintiff prays for such further or other relief in the premises as the nature of the case may require.

FREDERICK L. MANSON.

Frederick L. Manson, being duly sworn, deposes and says that he has read the above-entitled bill of complaint by him subscribed; that the statements therein contained upon personal knowledge are

true, and those stated upon information and belief he believes to be true.

MARCUS A. NORTON,
[SEAL.] *Clerk of the County Court, Winnebago Co., Illinois.*

C. H. ARMES,
Solicitor for Complainant.

8 EXHIBIT M. No. 1.

Filed Dec. 24, 1891. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

WILLIAM L. MANSON, Complainant,
vs.
ERASTUS POULSON, Trustee; FREDERICK L. Manson, William H. W. Walters, Cecelia M. Manson, Defendants. } In Equity. No. —, Doc. —.

The complainant, William L. Manson, states as follows:

1. He is a citizen of Philadelphia, in the State of Pennsylvania, and sues in his own right as creditor of the late Sarah M. J. Manson, his wife.

2. The defendants are citizens of the same place, and the said defendant, Erastus Poulson, is sued as trustee by virtue of two (2) certain deeds hereinafter cited, and Frederick L. Manson, William H. Walters, and Cecelia M. Manson are used as heirs-at-law of said Sarah M. J. Manson, being her only surviving children.

3. The said Sarah M. J. Manson died intestate as to her real estate in the city of Washington and District of Columbia, and at the time of her decease was seized of the hereinafter-described realty, in her own right, to and for her sole and separate use, free and discharged from any claim, right, title, or interest of her husband, as will more fully appear by reference to three certain deeds, the first from James W. Barker and wife and William L. Manson and wife to William R. Woodward, dated August 2, 1862; the second from said William L. Manson and Sarah M. J. Manson, his wife, to the said Erastus Poulson, trustee, dated 2d day of August, 1862, and the other from W. R. Woodward and James W. Barker to said Erastus Poulson, trustee, dated 2d day of August, 1865, and all duly recorded in the land record- of Washington county, District of Columbia, the first in Liber J. A. S. No. 219, page 391 *et seq.*, and the second in Liber J. A. S. No. 226, fol. 21 *et seq.*, and the other in Liber N. C. T. No. 61, fol. 3 *et seq.*, and the said deeds as recorded are prayed to be taken as part of this bill; the said real estate is contained within the following metes and bounds, to wit: All that certain piece or parcel of ground situate and being in the city of Washington, District of Columbia, being part of lot numbered six (6), in square numbered three hundred and twenty-three (323), be-

ginning for the same at a point twenty feet five and three-quarter-inches (20 ft. 5¾ inches) from the northwest corner of said lot numbered six (6), on 12th street, and running thence north with the line of said street twenty feet five and three-quarter- inches (20 ft. 5¾ inches), thence easterly ninety-one feet one inch (91 ft. 1 inch) to the line of an alley, thence southerly with the line of said alley twenty feet five and three-quarter- inches (20 ft. 5¾ inches), thence
9 westerly ninety-five feet one inch (95 ft. 1 inch) to the point of beginning, on said 12th street, being the north half or part of the parcel of land conveyed by William R. Woodward to the said defendant, Erastus Poulson, on second day of August, 1865.

4. Your complainant settled the estate of said Sarah M. J. Manson, deceased, by virtue of certain letters of administration *c. t. a.* issued from the office of the register for the probate of wills and granting letters of administration in and for the said city of Philadelphia, a certified copy of which is hereto annexed and marked Complainant'- Exhibit A as part of said bill, and the personal estate of the said decedent has been fully and finally administered, and the same would have proved insufficient and inadquate to pay the debts of the estate, but your complainant made advances out of his own funds to pay the indebtedness of said estate in full, and the said advances, together with assets of the estate, paid in full all the just claims filed and proven against said decedent, and your complainant has paid out of his own funds on said account over and above assets coming into his hands the sum of $2,051.26, which amount is justly due him, and there remain no funds from which to reimburse him unless the real estate hereinbefore described be sold and so much of the proceeds as may be necessary be applied to payment of your complainant's claim.

5. The said Frederick L. Manson and Cecelia M. Manson are infants.

Prayers.

1. That for the purpose aforesaid a trustee may be appointed to sell and convey the said property, and out of the proceeds arising from said sale pay the indebtedness due the complainant and distribute in conformity with decree, &c., &c.

2. That guardians *ad litem* be appointed to appear and defend the interest of each of said infants.

3. That U. S. writs of subpœna may be issued against each of said defendants, Erastus Poulson, trustee; Frederick L., William H. W., and Cecelia M. Manson.

4. That complainant may have such other and further relief as the nature of the case may require.

The defendants to this bill are Erastus Poulson, Frederick L. Manson, William H. W. Walters, Cecelia M. Manson.

WM. L. MANSON, *Compl't.*

W. P. BELL,
Solicitor for Compl't.

STATE OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

William L. Manson, the above-named complainant, being duly sworn, says he has read the foregoing bill, and that the contents as therein stated are true except as to matters set forth therein on information and belief, and as to those matters he believes them to be true.

WM. L. MANSON.

10 Sworn to and subscribed before me this 8th day of April, 1874.

W. GREER HIBLER,
U. S. Commissioner.

(Indorsed on back:) 3796. In equity. No. 3796, doc. 13. William L. Manson *vs.* Erastus Poulson *et al.* Creditor's bill. The clerk will please file and issue writs. Filed June 18, 1874. R. J. Meigs.

EXHIBIT M. No. 1A.

"Liber J. A. S. No. 219, folio 391 *et seq.*"

Jas. W. Barker and wife and Wm. L. Manson and wife to Wm. R. Woodward. } Recorded 2nd August, 1862. Deed.

This indenture made this the second day of August in the year one thousand eight hundred and sixty-two, between James W. Barker and Sarah A. R. his wife of the first part, William L. Manson and Sarah Jane his wife of the second part, and William R. Woodward of the third part: all of the city of Washington in the District of Columbia. Whereas the said Sarah Jane Manson is possessed of property separate from her said husband, which she is desirous of having invested in the purchaser of the premises hereinafter described; and therefore the said William L. Manson with her consent and concurrence hath entered into a contract with said James W. Barker for the purchase of the same premises hereinafter conveyed at the price or sum of eleven thousand dollars, and upon the following terms, to wit: Fifteen hundred dollars to be paid in cash upon the execution of these presents; one thousand dollars at the expiration of six months one thousand dollars in twelve months; four thousand dollars at the expiration of two years, in three promissory notes, one for the two thousand dollars, another for one thousand dollars, and the third for one thousand dollars; and thirty-five hundred dollars, the residue of said purchase-money, at the expiration of three years, also in three notes one for fifteen hundred dollars, another for one thousand dollars, and the third for one thousand dollars; for all of which notes are to be given and which are to bear interest, and such interest is to be paid quarter-year- on the whole amount owing from time to time and

the said notes, and the said principal and interest are intended to be paid out of the said separate estate and property of the said Sarah Jane Manson. And whereas there is now secured on the said premises by deed of trust from the said James W. Barker to William Redin, dated the fourth day of October, one thousand eight hundred and fifty-six, the sum of two thousand dollars from said Barker due to said Margaret C. Barker, and long since payable, but which has remained on security of the said premises, and the same is to be paid out of the said purchase-money, and as a part thereof, by the said parties hereto of the second part at the expiration of two years from the date hereof, and one of said notes above mentioned, namely that for two thousand dollars payable at two years is to be delivered to the said Margaret C. Barker collaterally to secure the said debt so due to her, she having consented to wait two years from the date hereof for payment of the said principal sum and to forego exercising the power given in and by the said deed above mentioned for coercing the payment of the said principal sum provided the interest thereon be paid henceforth regularly half-yearly as the same shall fall due on the fourth day of October and April in each year, and to the day of paying said principal, and the buildings remain on said lot in all respects the same as they now are the said purchase having been made subject to the said security for said two thousand dollars and interest held on said premises by said Margaret C. Barker and to the exercise of all the rights and powers reserved to her and the said trustee in and over the same in and by the said deed above recited with the modification however as to the time of paying said principal sum of two thousand dollars herein mentioned. And whereas all the said notes above mentioned have been made and executed by the said parties hereto of the second part and delivered; and it was by the said parties hereto of the first and second parts agreed further, that the same should be secured on the said premises; and that the said parties hereto of the first part should convey the premises to the said party hereto of the third part in trust to secure the same with such power- of sale for non-payment of principal or interest as are hereinafter contained and expressed. This indenture therefore witnesseth that in pursuance of the said contract and in consideration of the said sum of fifteen hundred dollars current money to the said parties hereto of the first part paid by said parties hereto of the second part out of the separate estate of said Sarah Jane Manson at or before the execution hereof the receipt whereof is hereby acknowledged and also in consideration of the further sum of nine thousand and five hundred dollars the residue of said purchase-money secured by said notes and these presents as above expressed and also of the further sum of one dollar like money to said parties of the first part paid by the said party hereto of the third part before the execution hereof and of like sum paid by him at the same time to the said parties hereto of the second part the receipts whereof are hereby acknowledged they the said parties hereto of the first part at the request and by the direction of the said parties hereto of the second part testified by their being parties hereto and

executing these presents have granted, bargained, sold, aliened, released and confirmed, and by these presents do grant, bargain, sell, alien, release and confirm, and the said parties hereto of the second part have and each of them, hath granted, bargained, sold, released, ratified and confirmed, and by these presents do and each of them doth grant, bargain, sell, release, ratify and confirm unto the said party hereto of the third part and his heirs all that piece or parcel of ground situate and being in the said city of Washington,
12 being part of lot number six, in square number three hundred and twenty-three in the said city, being the northern portion of the said lot, beginning for the same part at the northwest corner of the said lot number six on Twelfth street west and running thence south with the east line or side of said street forty feet and eleven and a half inches, thence easterly in a straight line ninety-five feet and one inch to the line of an alley, thence northerly with the line of said alley forty feet and eleven and a half inches to the dividing line between lots numbered six and seven in said square, thence westerly with said dividing line ninety-one feet and one inch to the point of beginning on Twelfth street being part of the ground purchased by said James W. Barker of the trustees under will of the late Peter Hagner who purchased the same direct from the United States, and being the premises above mentioned and referred to together with the two three-story brick dwelling-houses standing thereon, and all the rights and appurtenances to the same belonging, and all the estate, right, title and interest, legal and equitable, of the said parties hereto of the first and second parts therein and thereto. To have and to hold the said lot of ground, buildings and every part thereof, with the appurtenances unto and to the use of the said party hereto of the third part, his heirs and assigns, subject however to the payment of the said debt secured thereon to the said Margaret C. Barker as aforesaid. But upon the trusts and for the intents and purposes hereinafter expressed and declared of and concerning the same. And it is hereby declared and agreed by the said parties hereto of the first and second parts, and by each and every of them, that the grant and confirmation herein and hereby made to the said party hereto of the third part, his heirs and assigns, are so made and meant and intended to be, and that the said party hereto of the third part, his heirs and assigns shall stand and seized of and in said premises upon the trusts and for the interests and purposes following that is to say: in trust in the first place to secure the payment of the said notes above mentioned and every of them and every part of the principal and interest therein expressed unto the said James W. Barker his executors administrators and assigns at and upon the several and respective days and times therein and above expressed the interest on the whole of the principal due from time to time to be paid quarter-yearly until the full payment of the principal; and until there shall be some default in paying the same, and the said principal and interest as aforesaid, to permit the said Sarah Jane Manson to occupy and enjoy the said premises, and receive the rents thereof for her separate use, as provided and declared in and

by a separate deed bearing date herewith by the said parties hereto of the second part. But upon this further trust that if there shall be any neglect or default in the payment of the principal of the said notes or any of them, or any part thereof, by the said parties hereto of the second part, as and when the same shall become due and payable or in the payment of the interest upon the whole principal sum owing from time to time quarter-yearly from the date hereof, as the said interest money shall become due, then and in any of the said cases, and upon any one
13 failure it shall be lawful for the said party hereto of the third part, his heirs or assigns and upon the request of the said James W. Barker his executors administrators or assigns it shall be his and their duty to advertise the said premises or some sufficient part thereof, for sale, at public auction after two months' notice thereof; to be published in some newspaper of good circulation printed in the said city of Washington upon such terms as he or they shall deem reasonable and just; and unless the principal and interest money then in arrear and the expenses of advertising and a just compensation for the trustee's trouble be paid before the said sale, it shall be lawful for him and them to sell the said premises so advertised pursuant and according to such advertisement, and such advertisement and sale to repeat as often as occasion shall require; with power upon any such sale for him and them to convey the said premises to the purchaser thereof and his heirs without any further act or authority from or by said parties hereto of the second part. And upon further trust that the said party hereto of the third part his heirs or assigns do and shall pay and apply the money which shall come to his hands by or through any such sale in the first place in the payment of all expenses attending such sale including the usual commission to the trustee according to the rule of the circuit court of the District; next in the payment of said Margaret C. Barker and then of all said notes remaining unpaid, and all principal therein expressed with interest up to the day of payment to the said James W. Barker his executors administrators or assigns; and any residue there may be pay and apply the same to the said Sarah Jane Manson or to whom she shall appoint and in default of appointment to her proper representatives. But if the said notes shall be duly and fully paid as the same shall mature then upon full payment of all principal and interest, the said party hereto of the third part his heirs and assigns shall convey the said premises upon the trusts and for the purposes expressed and declared for the benefit of said Sarah Jane Manson in and by a certain other deed or declaration made by the said parties hereto of the second part and bearing date herewith. And the said James W. Barker doth hereby, for himself, his heirs, executors and administrators covenant and agree to and with the said party hereto of the third part his heirs and assigns, that he the said James W. Barker and his heirs shall and will warrant and forever defend the said hereditaments and every part thereof with the appurtenances unto him the said party of the third part his heirs and assigns against all persons whomsoever except said Margaret C. Barker and the claim for the

balance of said purchase-money as above expressed and further that he and his heirs and all such persons, except as aforesaid shall and will at all or any time or times hereafter, at the request and cost of the said party hereto of the third part his heirs or assigns, make do and execute all such further acts and deeds for better conveying the said premises unto him and them upon and for the trusts and purposes aforesaid as he or they shall require. And the said parties hereto of the second part do hereby for themselves, their heirs ex-
14 ecutors and administrators covenant and agree to and with the said party hereto of the third part his heirs and assigns that they shall and will keep the buildings on said lot or parcel of ground well and sufficiently insured against accidents by fire in some good office of insurance in a sum not less than five thousand dollars in the name of the said party hereto of the third part his heirs or assigns as trustee as aforesaid and pay all sums necessary for effecting and continuing such insurance from time to time; and should any sums become payable under any such policy the same shall be received by him and them and applied first, to the payment of the debt so due to said Margaret C. Barber next to the payment of the said notes hereby secured due to said James W. Barker and the residue to the said Sarah Jane Manson or whom she shall appoint and in default of appointment to her proper representative; and should there be and default in effecting or sustaining the said insurance it shall be lawful for the said party hereto of the third part his heirs or assigns to effect and sustain the same and all sums paid by him or them shall be a charge on said premises and recovable as the debts hereby secured; and the said parties hereto of the second part hereby further covenant and agree that the said deed for the benefit of said Margaret C. Barber and the trusts and powers thereof shall not be in any respect interfered with by them or either of them or by these presents if there shall be neglect in paying said sum of two thousand dollars due to her as aforesaid at the expiration of two years from date hereof and the interest thereon half-yearly in the meantime as the same shall become due, but for any such default the said deed and all its powers shall be immediately operative and in full force and virtue.

In witness whereof the said parties hereto of the first and second parts have hereunto set their hands and seals the day and year first above written.

JAMES W. BARKER. [SEAL.]
SARAH A. R. BARKER. [SEAL.]
WM. L. MANSON. [SEAL.]
S. JANE MANSON. [SEAL.]

Signed sealed, and delivered by the said Jas. W. Barker and Sarah A. R. Barker in the presence of—
J. F. CALLAN.
JACOB HINES.

Signed, sealed, and delivered by the said Wm. L. Manson and Sarah Jane Manson in the presence of us—
HENRY REAVER.

——.

DISTRICT OF COLUMBIA, } *To wit:*
Washington County, }

Be it known and I do hereby certify that James W. Barker and Sarah A. R., his wife, parties to a certain deed bearing date
15 the second day of August instant and hereto annexed, appeared personally before me, the subscriber, a notary public in and for the county above named, duly commissioned and qualified in my said county on the day of the day of the date hereof (they being personally well known to me as the persons who executed the said deed), and the said James W. Barker did then and there in my presence execute the said deed, and also acknowledge the same before me to be his act and deed; and I further certify that the said Sarah A. R., the wife of the said James W. Barker, being by me previously examined privily and apart from her said husband and having the deed aforesaid fully explained to her, she, the said Sarah A. R. Barker, then and there, out of the presence and hearing of her said husband, but in my presence, executed the said deed, and also acknowledged the same before me to be her act and deed and declared that she had willingly signed, sealed, and *deed and* delivered the same, and that she wished not to retract it.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this second day of August, one thousand eight hundred and sixty-two.

JOHN F. CALLAN, [SEAL.]
Notary Public.

DISTRICT OF COLUMBIA, } *To wit:*
Washington County, }

Be it hereby known and I do hereby certify that William L. Manson and Sarah Jane Manson, his wife, parties to a certain deed bearing — the second day of August instant and hereto annexed, appeared personally before me, the subscriber, a notary public in and for said county above named, duly commissioned and qualified in my said county on the day of the day of the date hereof (they being personally well known to me as the persons who executed the said deed), and the said William L. Manson did then and there in my presence execute the said deed, and also acknowledge the same before me to be his act and deed; and I further certify that the said Sarah Jane, the wife of the said William L. Manson, being by me previously examined privily and apart from her said husband and having the deed aforesaid fully explained to her, she, the said Sarah Jane Manson, then and there, out of the presence and hearing of her said husband, but in my presence, executed the said deed, and also acknowledged the same before me to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

In testimony whereof I have hereunto set my name and affixed my official seal this second day of August, one thousand eight hundred and sixty-two.

HENRY REAVER, [SEAL.]
Notary Public.

16 EXHIBIT M. No. 1B.

Liber J. A. S. No. 226, folio 21.

Wm. L. Manson and wife to Erastus Poulson. } Declaration of trust. Recorded 1st December, 1862.

This indenture made the second of August in the year one thousand eight hundred and sixty-two, between William L. Manson and Sarah Jane Manson his wife, of the first part, William R. Woodward of the second part and Erastus Poulson of the third part; the said parties of the first and second parts being of the city of Washington in the District of Columbia, and the said party of the third part being of the city of Philadelphia in the State of Pennsylvania. Whereas by deed dated the second day of August, 1862, between James W. Barker and wife of the first part, the said Wm. L. Manson and Sarah Jane his wife of the second part and the said William R. Woodward of the third part, all that lot or parcel of ground situate in the said city of Washington being part of lot numbered six in square numbered three hundred and twenty-three in said city, being the northern portion of the said lot: Beginning for the same part at the northwest corner of said lot numbered six on Twelfth street west and running thence south with the east side or line of said street forty feet and eleven and a half inches, thence easterly in a straight line ninety-five feet and one inch to the line of an alley, thence northerly with the line of said alley forty feet and eleven and a half inches to the dividing line between lots number six and seven in said square, thence westerly with said dividing line ninety-one feet and one inch to the point of beginning on Twelfth street, with the two three-story brick dwelling-houses thereon, and the appurtenances to the same belonging have conveyed unto the said party hereto of the second part, in trust, in the first place; to secure to said James W. Barker the several promissory notes of the said parties hereto of the first part therein mentioned, with power to sell the said premises for non-payment of the said notes or any of them, and to apply the purchase-money in paying said notes, and the residue to said Sarah Jane Manson or to whom she should appoint; but upon full payment of said notes without any such sale, then the said party hereto of the second part was to convey the said premises to such person as the said Sarah Jane Manson should nominate, who was to hold the same upon trusts for the benefit of the said Sarah Jane Manson, and with and upon said powers and for such purposes as she and her said husband should declare in and by another indenture or deed, meaning these presents; and until payment of the said notes, the said party hereto of the second part was to stand seized of said premises upon the same trusts, and for the same purposes, so to be declared subject however to the said notes and debts. Now therefore these presents witness, and it is hereby, in pursuance of said
17 deed above recited, declared by the said parties hereto of the first part and each of them, that the grant therein contained

and made to the said party hereto of the second part was so made upon this further trust and confidence, that, after the full payment of the said notes in the said deed mentioned, he should convey the said premises to a trustee, to be named and nominated, for the separate use of the said Sarah Jane Manson, and which trustee should hold the said premises upon the trusts, to be declared thereof by the said parties hereto of the first part, and they the said parties do and each of them doth hereby nominate and appoint the said party hereto of the third part to be such trustee, and hereby direct and authorize the said party hereto of the second part to convey the same premises above described to him and his heirs, whenever and after the said notes shall have been fully paid and the trusts of said above-recited deed shall in respect thereof have been fully satisfied without any sale having been made of said premises in virtue thereof for raising and paying said notes and debts; and the said parties hereto of the first part, and each of them do and doth hereby further declare, that when and so soon as the said premises shall in pursuance hereof have been so conveyed by the said party hereto of the second part to the said party hereto of the third part his heirs and assigns, he and they shall thenceforth stand seized of said premises upon the following trusts and purposes, to wit: in trust for the said Sarah Jane Manson for and during her life, and to permit her to occupy said premises and to receive the rents and profits thereof, for her own sole and separate use, free from the interference of her present or any future husband, and without being liable for his debts or engagements, her receipt alone being a valid discharge for such rents and profits. And upon further trust that it shall be lawful for the said Sarah Jane Manson at any time and from time to time during her life to dispose of the said premises either by absolute sale or mortgate thereof as she may think proper, in which the said party hereto of the third part his heirs or assigns shall join, such disposition to be made by deed or deeds to be executed and acknowledged by the said trustees, and by the said Sarah Jane Manson as if she were sole and unmarried. And in default of any such sale or mortgage or so far as the same shall not extend, upon further trust for such person or persons and for such estate and in such parts shares and proportions as she the said Sarah Jane Manson shall or may from time to time by any deed or instrument of writing or by her last will and testament, under her hand and seal (and which will she is hereby authorized to make) limit direct or appoint give or devise the same; and in default of any such limitation direction and appointment gift or devise, in trust for such child or children as she shall leave surviving her and the issue of any deceased child or children equally share and share alike, such issue taking his, her, or their parent or parent's share; and for default of all such children or issue then in trust for the right heirs of the said Sarah Jane Manson forever. And it is further declared that all moneys which
18 shall or may be raised by sale or mortgage of the said premises or any part thereof shall be paid to the said Sarah Jane Manson, and be disposed of as she shall or may think best, her receipt being a valid discharge therefor; and the party paying the

same not being bound to see to the application or disposition thereof. And it is hereby further declared, that in the meantime and so long as the said notes and debts or any of them or any part thereof mentioned in said deed above recited, shall remain unpaid and until said party hereto of the second part shall have conveyed, said premises pursuant hereto unto the said party hereto of the third part, he the said party hereto of the second part and his heirs shall stand seized of said premises upon the same trusts and under and subject to the same powers limitations, appointments and ultimate use that are hereby expressed and declared of and concerning the same for and in *forever* of the said Sarah Jane Manson; but at all times as long as the said notes and debts or any of them or any part thereof shall remain unpaid, the said premises shall be subject to the same, and to the power of sale given in and by the said deed above recited for raising and paying such notes and debts; the intention being that the trusts, objects and purposes of the said deed shall in no respects be interfered with, by these presents; that no disposition of said premises can or shall be made in virtue hereof, except subject thereto; and that the only interest which the said party hereto of the second part or his heirs can or may dispose of by virtue of these presents, is the equitable estate or interest of the said Sarah Jane Manson subject to the said debts and notes and to the full exercise of the powers of said recited deed. And in the event of any sale being made by him or them thereunder and of there being any balance of moneys remaining in his or their hands therefrom, it is hereby further declared that he and they do and shall pay any such surplus moneys unto the said party hereto of the third part, to be disposed of by him as the said Sarah Jane Manson shall in writing direct. In witness whereof the said parties hereto of the first part have hereunto set their hands and seals the day and year above written.

WM. L. MANSON. [SEAL.]
S. JANE MANSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
HENRY REAVER.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

Be it hereby known, and I do hereby certify, that William L. Manson and Sarah Jane Manson, parties to a certain deed bearing date the second day of August, 1862, and hereto annexed, appeared personally before me, the subscriber, a notary public in and for the county above named, duly commissioned and qualified, in my said county, on the day of the date hereof, they being personally well known to me as the persons who executed the said deed, and the said William L. Manson did then and there in my presence execute the said deed and also acknowledge the same before me to
19 be his act and deed; and I further certify that the said Sarah Jane, the wife of the said William L. Manson, being by me previously examined privily and apart from her said husband and

having the deed aforesaid fully explained to her, she, the said Sarah Jane Manson, then and there, out of the presence and hearing of her said husband, but in my presence, executed the said deed and also acknowledged the same before me to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this second day of August, in the year one thousand eight hundred and sixty-two.

HENRY REAVER,
Notary Public. [SEAL.]

EXHIBIT M. No. 1c.

Liber N. C. T. No. 61, folio 3.

William R. Woodward and James W. Barker to Erastus W. Poulson, trustee. } Release.

This indenture, made this second day of August, one thousand eight hundred and sixty-five. Between William R. Woodward, of the first part, James W. Barker, of the second part, Sarah Jane Manson, of the third part, and Erastus Poulson, of the fourth part; the said parties of the first and seconds parts, being in the city of Washington, in the District of Columbia, and those of the third and fourth parts, of the city of Philadelphia, in the State of Pennsylvania. Whereas by deed dated the second day of August, 1862, recorded in Liber J. A. S. No. 219, folio 391, all that piece or parcel of ground, situate and being in the city of Washington aforesaid, being part of lot number six in square number three hundred and twenty-three, in said city, being the northern portion of the said lot, beginning for the same part at the northwest corner of said lot number six on Twelfth street west, and running thence south with the east side *of* line of said street, forty feet eleven and a half inches; thence easterly in a straight line ninety-five feet and one inch to the line of an alley; thence northerly with the line of said alley, forty feet and eleven and a half inches to the dividing line between lots number six, and number seven in said square; thence westerly with said dividing line ninety-one feet, and one inch, to the point of beginning on said Twelfth street, with the buildings thereon, and appurtenances to the same belonging, was conveyed to the said party hereto of the first part, in trust, to secure to the said party hereto of the second part, the sum of nine thousand and five hundred dollars, by several notes therein mentioned, due from the said party hereto of the third part, wife of William L. Manson; one of which notes for two thousand dollars at two years was to
20 be paid to Margaret C. Barber, who held a lien on said premises for that sum, and upon full payment of the whole of said debt or notes, the said party hereto of the first part, was to release and convey the said premises to the said party hereto of the fourth

part, and his heirs, upon the special trusts and with the powers expressed in a certain deed between the said William L. Manson, and wife, and the said party hereto of the fourth part, dated the second day of August 1862 and recorded in Liber J. A. S. No. 226 folio 21, for the sole and separate use and benefit of the said party of the third part, as expressed and declared in and by said recited deed. And whereas the said lien of the said Margaret C. Barber and the whole of the said debt or notes for nine thousand five hundred dollars have been paid by the said party hereto of the third part, out of her separate estate, except the sum of three thousand five hundred dollars, for which three notes were given and are now outstanding as is shown by the admission of the said party hereto of the second part testified by his being a party hereto and executing these presents by the production by the said party hereto of the third part, of the said notes given therefor, cancelled, and by the deed of release of the said Margaret C. Barber and her trustee, as to the said two thousand dollars dated the second day of June 1864 and recorded in Liber N. C. T. No. 38 folio 155, and the said party hereto of the third part now proposes to pay off out of her said separate estate the remainder of said debt of nine thousand and five hundred dollars, and the said three remaining notes originally secured on said premises being the said sum of thirty-five hundred dollars and interest, and which said sum and interest have been accordingly fully paid as said party hereto of the second part doth hereby admit and acknowledge testified as aforesaid. This indenture therefore witnesseth that in consideration of the payment as aforesaid of the whole of the said original debt of nine thousand and five hundred dollars secured on the said premises by the said first-recited deed, and of the sum of one dollar current money to the said party hereto of the first part in hand paid by the said party hereto of the fourth part at or before the execution of these presents (the receipt whereof is hereby acknowledged) he the said party hereto of the first part hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm (at the request of the said party hereto of the second party testified as aforesaid) unto the said party hereto of the fourth part, his heirs and assigns, all that the said piece or parcel of ground situate and being in the said city of Washington and being part of lot number six in square number three hundred and twenty-three, hereinbefore described and conveyed in and by said deed first above recited in trust as aforesaid; together with the buildings and improvements thereon and the rights and appurtenances to the same belonging: To have and to hold the said hereditaments and premises above described and any part thereof with the appurtenances unto and to the use of the said party hereto of the fourth part his heirs and assigns, free from the said debts and all said notes mentioned in said first above recited deed and absolutely discharged
21 therefrom, but in trust for the sole and separate use and benefit of the said party hereto of the third part exclusive of her husband; and upon the trusts, and to and for the intents and purposes and with and subject to the powers and the execution thereof which

are expressed declared and contained of and concerning the same. in and by the said deed of the second day of August eighteen hundred and sixty-two made to the said party hereto of the fourth part secondly above recited and referred to and to and for no other use or purpose. And the said party hereto of the first part hereby covenants with the said party hereto of the fourth part that he hath done no act whatever to affect the said premises or to release or assign the security hereby intended to be released; and that he will at any time hereafter at the request and cost of the said party hereto of the fourth part his heirs or assigns do any further act or deed the better to release the said premises of and from the said debt and notes. In witness whereof the said parties hereto of the first and second parts have hereunto set their hands and seals the day and year first above written.

JAMES W. BARKER. [L. S.]
WM. R. WOODWARD, *Trustee.* [L. S.]

Signed, sealed, and delivered by the said James W. Barker in the presence of—
W. REDIN.

Signed, sealed, and delivered by the said Wm. R. Woodward in the presence of—
CHAS. McNAMEE.

DISTRICT OF COLUMBIA, *Washington County.* } *To wit:*

I, Charles McNamee, a notary public in and for the county and District above named, duly commissioned and qualified, do hereby certify that William R. Woodward, party to a certain deed bearing date the second day of August, 1865, and hereto annexed, appeared personally before me, in my county aforesaid, on the day of the date hereof (he being personally well known to me as the party who executed the said deed), and he then and there executed the said deed in my presence, and also acknowledged the same before me to be his act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 19th day of August, one thousand eight hundred and sixty-five.

CHARLES McNAMEE,
Notary Public. [NOTARIAL SEAL.]

22 EXHIBIT M. No. 1D.

COMMONWEALTH OF PENNSYLVANIA, *City and County of Philadelphia,* } *ss:*

[Seal of Register's Office, City & C. of Philada.]

By the tenor of these presents I, J. Alexander Simpson, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia, in the Commonwealth

of Pennsylvania, do make known to all men that on the twelfth day of September, A. D. 1870, at Philadelphia, before me, was proved and approved the last will and testament of Sarah Margaret Jane Manson, deceased (a true copy whereof is to these presents annexed), having whilst she lived and at the time of her death divers goods, chattels, rights, and credits within the said Commonwealth, by reason whereof the approbation and insinuation of said last will and testament and the committing administration of all and singular the goods, chattels, rights, and credits which were of the said deceased, and also the auditing the accounts, calculations, and reckonings of the said administration and absolute care of the same to me, are manifestly known to belong, and that administration of all and singular the goods, chattels, rights, and credits of said deceased any way concerning her last will and testament was committed to William L. Manson, administrator *cum testamento annexo* in the said testament named, he having first been duly sworn well and truly to administer the goods, chattels, rights, and credits of the deceased and make a true and perfect inventory thereof and exhibit the same into the register's office at Philadelphia on or before the twelfth day of October next, and to render a just and true account, calculation, and reckoning of the said administration on or before the twelfth day of September, one thousand eight hundred and seventy-one, or when lawfully required, and also to diligently and faithfully regard and well and truly comply with the provisions of the act relating to collateral inheritance.

In testimony whereof I have hereunto set my hand and seal of office, at Philadelphia, this twelfth day of September, in the year of our Lord one thousand eight hundred and seventy (1870).

JOHN H. CAMPBELL,
Dep. Register.

(U. S. internal-revenue stamp, one dollar.)

In the name of God amen I Sarah Margaret Jane Manson wife of William L. Manson and generally called Margaret residing in Bucks county Pennsylvania do hereby make this as and for my last will and testament hereby revoking all other wills: First, I direct my just debts to be paid, second I give devise and bequeath all of my estate real personal and mixed in manner following that is to say it is my will that my husband William L. Manson shall take receive and enjoy all of the rents issues and profits of my said real and personal estate during his life to use and apply the same
23 for his own support and the support in a proper and good style of my three children to wit Frederick L. Manson, William Henry Walters, Cecelia Mulford Manson and to bring them up and educate in a liberal and proper manner and to be their guardian so *so* long as he remains unmarried but if he should marry again then it is my will that he shall surrender the custody of the children and that the court having proper jurisdiction shall appoint a suitable person to be their guardian on the death of said William L. Manson my said husband I give devise and bequeath all of my said real and personal estate to be equally divided share and share

alike between my above-named three children when the youngest of them shall reach the age of twenty-one years and not before.

In witness whereof I have hereunto set my hand and seal this twentieth day of April, anno Domini eighteen hundred and sixty-five.

SARAH MARGARET JANE MANSON. [SEAL.]

Signed and sealed in the presence of each of us by the said testatrix, Philada., 20th April, 1865.

B. H. BREWSTER.
EDWARD D. McLOUGHLIN.

Edward D. McLoughlin and B. H. Brewster, the subscribing witnesses to the foregoing will, sworn September 12th, 1870.

(Indorsed:) C. T. A. Eq. No. 3796. Complainant's Exhibit A, letters of. Will of Sarah Margaret Jane Manson, deceased. Eq. No. —. Filed Jun- 18, 1874. R. J. Meigs.

Spa. to Ans. Original Bill.

Issued June 20, 1892.

In the Supreme Court of the District of Columbia, June 20th, 1892.

FREDERICK L. MANSON, Complainant, *against* CHARLES C. DUNCANSON, Defendant. } No. 14017, Equity Docket 34.

The President of the United States to Charles C. Duncanson, defendant:

You are hereby commanded to appear in this court at its first special term, occurring ten days after service of this subpœna, and answer the exigency of the bill under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

J. R. YOUNG, *Clerk, &c.*,
[SEAL.] By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

24 *Marshal's Return.*

Summoned the within-named defendant June 24, 1892.

D. M. RANSDELL, *Marshal.*

Order for Appearance.

Order Book 12, p. 299.

F. L. MANSON
vs.
CHAS. C. DUNCANSON. } 14017.

The clerk will please enter my appearance for def't.

HENRY WISE GARNETT.

July 9th, '92.

Answer of Defendant.

Filed Sep. 6, 1892. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

The answer of Charles C. Duncanson to the bill of complaint against him in this cause filed.

This defendant, answering, says:

1st. In reply to the allegations contained in the 1st paragraph of the bill he says he has no knowledge of the facts therein alleged except that the sum of seventeen thousand dollars is now in the registry of this court, being the assessed value of the property of this defendant condemned in certain proceedings taken by the United States to secure a site for a post-office in the city of Washington, in square No. 323, said sum having been paid by the United States in said proceedings.

2nd. In reply to the allegations contained in the 2nd paragraph of the bill this defendant says he is a resident of the said District; that he was the rightful owner of said property — the payment of which the said sum of seventeen thousand dollars was paid by the United States into the registry of this court, and that he is the rightful owner of said money. He denies and says it is false that there was any chancery proceeding in relation to said property in which this court passed a decree relating to said property in which it had no jurisdiction.

3rd. In reply — the allegations contained in the 3rd paragraph of the bill this defendant says that all the matters therein alleged, if true, which the defendant does not admit, are matters of record in certain deeds duly recorded among the land records of the
25 District of Columbia, and this defendant refers to the said deeds as the best evidence of their contents and, if the same are considered material to this cause, asks that strict proof of the same may be made.

4th. In reply to the allegations contained in the 4th paragraph of the bill this defendant says he has no personal knowledge of the truth of said allegations, and if the same are considered material to this cause he asks that strict proof thereof be made.

5th. This defendant has no personal knowledge of the allegations contained in the 5th paragraph of the bill and neither admits nor denies the same, but calls for strict proof thereof.

6th. In reply to the allegations contained in the 6th paragraph of the bill this defendant admits that the suit of William Manson, complainant, against Erastus Poulson, trustee; Frederick L. Manson, William H. Walters, Cecelia M. Manson, defendants, No. 3796, in equity, in this court, was duly filed, and this defendant refers to the said proceedings in said cause and herewith files a certified copy thereof, marked "Exhibit A," and asks that it may be read as a part of this answer.

7th. In reply to the allegations contained in the 7th paragraph of the bill that as to so much of the allegations contained in the 7th paragraph as alleges that this honorable court had no jurisdiction to pass the decree passed by it in the said equity cause of Manson *vs.* Poulson, trustee, *et al.*, No. 3796, equity, this defendant says that this honorable court, having before it all the parties in interest by due process of law and having jurisdiction of the subject-matter, had full jurisdiction and power to pass the decree passed by it, and this defendant asks that he may have the same benefit as if he had demurred to this part of the bill. This defendant admits that the said W. P. Bell, trustee, did for a full and valuable consideration execute a deed for said real estate to one Frederick Volk, and the said Frederick Volk and his wife afterwards conveyed the same by deed to Louis Schmid, Edward Schmid, and Alexander Schmid, and the said Louis, Edward, and Alexander Schmid and their respective wives did convey the said property to this defendant, Charles C. Duncanson, and that each and all of said conveyances were for full and valuable consideration, and this defendant, further answering, says that the parties named have been in open and notorious possession under said deeds of the said real estate involved in and sold under the decree in the said equity cause, No. 3796, since the sale thereof by the said trustee, W. B. Bell, and the said property was improved at the time of the said sale, and has remained improved since that date in the open and adverse possession of the various owners above named, and this defendant says that it is true that he claims the said seventeen thousand dollars now in the registry of this court as the proceeds of the condemnation of said real estate, as he was the owner of the said real estate at the time the same was condemned and is entitled to the money paid for the same by the Government, and this defendant denies that the said deeds and the equity proceedings on which they were based were null and void, and he avers that all the parties to the said deeds had,
26 and he now has a good and valid title to the said real estate and the fund paid therefor under said condemnation proceedings.

8th. This defendant admits the allegations contained in the 8th paragraph of the bill.

9th. In reply to the allegations contained in the 9th paragraph of the bill this defendant says he has no knowledge of the age of the complainant in the year 1874, during which year on the 1st day of December his answer was made in said equity proceedings, and he calls for proof if the said allegation is considered material. This defendant is informed by the allegations in the bill that the complainant had for at least a year or more been in the military service of the United States as a member of the 4th United States cavalry. In reply to the allegation of the complainant that he had no knowledge of any one having assumed to act as guardian for him or had filed an answer in said equity proceeding, No. 3796, for him, this defendant avers that the record shows that the proceedings were had against the said complainant in the said suit and a commission was issued to take his answer, and the three commissioners, one of whom was a captain in the 4th United States cavalry, certified that the complainant appeared before them as commissioners, and the guardian *ad litem* for said complainant was then and there appointed by them as commissioners in said equity cause and made answer for said complainant, and from the information so derived from the record this defendant believes and avers the statement by the complainant as to when he was first informed of said equity proceeding in cause No. 3796 was and is absolutely untrue and false. The other allegations contained in this paragraph are immaterial as this defendant is informed and calls for no answer on his part.

10th. In reply to the allegations contained in the 10th paragraph of the bill this defendant avers that the same, as he is informed by counsel, are immaterial and require no answer on his part beyond the fact that by them the complainant admits that in the year 1877 he was informed of the death of his father, William L. Manson, who was the complainant in said equity cause No. 3796, and the complainant at that time made inquiry as to the estate left by his mother and what disposition had been made thereof; and this defendant avers that it would be unequitable and unjust to allow the complainant not only to wait until (14) fourteen years after the death of the said William L. Manson, who could have testified as to complainant's knowledge of said equity cause and the sale of the property thereunder, but (16) sixteen years after the sale of the real estate involved in cause No. 3796 before setting up any claim or title thereto or making any attack upon said equity proceeding; and this defendant avers that the complainant has been guilty of laches, and on that account is not entitled to any relief in this cause.

11th. In reply to the allegations contained in the 11th paragraph of the bill this defendant alleges that he has no personal knowledge of the facts therein alleged, and neither admits nor denies the same, and asks for strict proof thereof, if the same shall be con-
27 sidered material to the court; and this defendant, further answering, says that it is indicative of the bold character of the complainant, which boldness was acquired doubtle*dd* in military

service, that he is enabled to state that he had no information whatever concerning the whereabouts of his sister and brother nor as to whether they are now alive or dead and in the same paragraph of the bill to state under oath that, on information, he believes thay are not only dead, but died intestate, leaving the complainant their only next of kin and heir-at-law.

12th. In reply to the allegations contained in the 12th paragraph of the bill this defendant avers that the same are false and untrue, and further avers, on information derived from the record of said equity cause 3796, that the defendant Walters appeared personally and filed an answer, and that commissions were duly issued to take the answer of the complainant and his sister Cecelia, and that said commissioners duly appointed guardians *ad litem*, who made due answer for the complainant and his said sister.

And this defendant prays that he may have the same benefit as if he had demurred to the bill in this cause, and, having fully answered, he further prays that he may be hence dismissed with his reasonable costs in this cause incurred.

CHARLES C. DUNCANSON.

HENRY WISE GARNETT,
Sol'r for Def't.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof; that the facts therein stated upon my own personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

CHARLES C. DUNCANSON.

Subscribed and sworn to before me this fifteenth day of August, A. D. 1892.

HARVEY S. W. DE GAW,
Notary Public. [SEAL.]

"EXHIBIT A" with Answer of Def't-.

Filed Sep. 6, 1892. J. R. Young, clerk.

In the Supreme Court of the District of Columbia, the — Day of ——.

WILLIAM L. MANSON, Complainant, *vs.* ERASTUS POULSON, Trustee; FREDERICK L. MANSON, William H. W. Walters, Cecelia M. Manson, Defendants.	In Equity. No. 3976, Doc. 13.

The complainant, William L. Manson, states as follows:

1. He is a citizen of Philadelphia, in the State of Pennsylvania, and sues in his own right as creditor of the late Sarah M. J. Manson, his wife.

2. The defendants are citizens of the same place, and the said

defendant, Erastus Poulson, is sued as trustee by virtue of
28 two (2) certain deeds hereinafter cited, and Frederick L. Manson, William H. Walters, and Cecelia M. Manson are sued as heirs-at-law of said Sarah M. J. Manson, being her only surviving children.

3. The said Sarah M. J. Manson died intestate as to her real estate situated in the city of Washington and District of Columbia, and at the time of her decease was seized of the hereinafter-described realty in her own right, to and for her sole and separate use, free and discharged from any claim, right, title, or interest of her husband, as will more fully appear by reference to three certain deeds, the first from James W. Barker & wife and William L. Manson & wife to Wm. R. Woodward, dated August 2, 1862, the second from said William L. Manson and Sarah M. J. Manson, his wife, to the said Erastus Poulson, trustee, dated 2nd day of August, 1862, and the other from W. R. Woodward and James W. Barker to said Erastus Poulson, trustee, dated 2nd day of August, 1865, and all duly recorded in the land records of Washington county, District of Columbia, the first in Liber J. A. S., No. 219, page 391 *et seq.*, and the second in Liber J. A. S., No. 226, fol. 21 *et seq.*, and the said deeds as recorded are prayed to be taken as part of this bill; the said real estate is contained within the following metes and bounds, "to wit:" All that certain piece or parcel of ground situate and being in the city of Washington, District of Columbia, being part of lot numbered six (6), in square numbered three hundred and twenty-three (323), beginning for the same at a point twenty feet, five and three-quarter inches (20 ft., 5¾ inches) from the northwest corner of said lot numbered six (6) on 12th street and running thence north with the line of said street twenty feet, five and three-quarter inches (20 ft., 5¾ inches), thence easterly ninety-one feet, one inch (91 ft., 1 inch), to the line of an alley, thence southerly with the line of said alley twenty feet, five and three-quarter inches (20 ft., 5¾ inches), thence westerly ninety-five feet, one inch (95 ft., 1 inch), to the point of beginning on said 12th street, being the north half or part of the parcel of land conveyed by William R. Woodward to the said defendant, Erastus Poulson, on second day of August, 1865.

4. Your complainant settled the estate of said Sarah M. J. Manson, deceased, by virtue of certain letters of administration *c. t. a.* issued from the office of the register for the probate of wills and granting letters of administration in and for the said city of Philadelphia, a certified copy of which is hereto annexed and marked Complainant'- Exhibit A as part of this bill. and the personal estate of the said decedent has been fully and finally administered, and the same would have proved insufficient and inadequate to pay the debts of the estate, but your complainant made advances out of his own funds to pay the indebtedness of said estate in full, and the said advances, together with assets of the estate, paid in full all the just claims filed and proven against said decedent, and your complainant has paid out of his own funds on said account over and above assets coming into his hands the sum of $2,051.26, which

amount is justly due him, and there remains no fund from
29 which to reimburse him unless the real estate hereinbefore described be sold and so much of the proceeds as may be necessary be applied to payment of your complainant's claim.

5. The said Frederick L. Manson and Cecelia M. Manson are infants.

Prayers.

1. That for the purpose aforesaid a trustee may be appointed to sell and convey the said property and out of the proceeds arising from said sale pay the indebtedness due the complainant and distribute in conformity with decree, &c., &c.

2. That guardians *ad litem* be appointed to appear and defend the interests of each of said infants.

3. That the U. S. writs of subpœna may be issued against each of said defendants, Erastus Poulson, trustee; Frederick L., William H. W., and Cecelia M. Manson.

4. That complainant may have such other and further relief as the nature of the case may require.

The defendants to this bill are Erastus Poulson, Frederick L. Manson, William H. W. Walters, Cecelia M. Manson, ——— ———, Wm. M. Manson, compl't.

W. P. BELL,
Solicitor for Compl't.

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } ss:

William L. Manson, the above-named complainant, being duly sworn, says he has read the foregoing bill, and that the contents as therein stated are true except as to matters set forth therein on information and belief, and as to these matters he believes — to be true.

WM. L. MANSON.

Sworn to and subscribed before me this eighth day of April, 1874.

W. GRIER HIBLER,
[SEAL.] *U. S. Commissioner.*

(Endorsed:) 3796. In equity. No. 396. Doc. 13. William L. Manson *vs.* Erastus Poulson *et al.* Creditor's bill. The clerk will please file & issue writs. Filed Jun- 12, 1874. R. J. Meigs.

COMMONWEALTH OF PENNSYLVANIA, }
City and County of Philadelphia, } ss:

[SEAL.] By the tenor of these presents, I, J. Alexander Simpson, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania—

Do make known to all men, that on the twelfth day of Septem-

ber, A. D. 1870, at Philadelphia, before me was proved and approved, the last will and testament of Sarah Margaret Jane
30 Manson, deceased (a true copy whereof is to these presents annexed), having, whilst she lived, and at the time of her death, divers goods, chattels, rights, and credits within the said Commonwealth, by reason whereof the approbation and insinuation *and* of said last will and testament, and the committing administration of all and singular the goods, chattels, rights, and credits which were of the said deceased, and also the auditing the accounts, calculations, and reckonings of the said administration, and absolute care of the same, to me are manifestly known to belong; and that administration of all and singular the goods, chattels, rights, and credits of said deceased, any way concerning her last will and testament, was committed to William L. Manson, administrator *cum testamento annexo*, in the said testament named, he having been first duly sworn well and truly to administer the goods, chattels, rights, and credits of the deceased and make a true and perfect inventory thereof, and exhibit the same to the register's office at Philadelphia, on or before the twelfth day of October next, and to render a just and true account, calculation, and reckoning of the said administration on or before the twelfth day of September, one thousand eight hundred and seventy-one, or when lawfully required, and also to diligently and faithfully regard and well and truly comply with the provisions of the act relating to collateral inheritance.

In testimony whereof I have hereunto set my hand and seal of office, at Philadelphia, this twelfth day of September, in the year of our Lord one thousand eight hundred and seventy, 1870.

JOHN H. CAMPBELL,
Dep. Register.

In the name of God amen. I, Sarah Margaret Jane Manson wife of William L. Manson and generally called Margaret residing in Bucks county Pennsylvania do hereby make this as and for my last will and testament hereby revoking all other wills.

First. I direct my just debts to be paid.

Second. I give devise and bequeath all of my estate real personal and mixed in manner following that is to say. It is my will that my husband William L. Manson shall take receive and enjoy all of the rents issues and profits of my said real and personal estate during his life to use and apply the same for his own support and the support in a proper and good style of my three children to wit: Frederick L. Manson, William Henry Walters, Cecelia Mulford Manson and to bring them up and to educate in a liberal and proper manner and to be their guardian so long as he remains unmarried but if he should marry again then it is my will that he shall surrender the custody of the children and that the court having proper jurisdiction shall appoint a suitable person to be their guardian on the death of said William L. Manson my said husband. I give devise and bequeath all of my said real and personal estate to be equally divided share and share alike between my above-named three chil-

dren when the youngest of them shall reach the age of twenty-one years and not before.

In witness whereof I have hereunto set my hand and seal
31 this twentieth day of April anno Domini eighteen hundred and sixty-five.

SARAH MARGARET J. MANSON. [SEAL.]

Signed — sealed in the presence of each of us by the said testatrix, Phila., 20th April, 1865.

B. H. BREWSTER.
EDWARD D. McLOUGHLIN.

Edward D. McLoughlin and B. H. Brewster, the subscribing witnesses to the foregoing will, sworn September 12th, 1870.

(Endorsed:) C. T. A. Eq. No. 3796. Complainant's Exhibit A. Letters of —. Will of Sarah Margaret Jane Manson, deceased. Filed Jun- 12, 1874. R. J. Meigs.

In the Orphans' Court for the City and County of Philadelphia.

In the Matter of the Estate of SARAH JANE MANSON, Deceased.

To the honorable the judges of the orphans' court aforesaid:

The auditor appointed by the court to audit, settle, and adjust the account of William L. Manson, administrator *cum testamento annexo* of all and singular the goods and chattels, rights and credits, which were of Sarah Jane Manson, deceased, and to report distribution of the balance in the hands of the accountant, respectfully reports that, having been duly qualified (as appears by the certificate hereto annexed, marked "Exhibit A") and having given due and legal notice of the time and place of meeting by advertisement in the "Legal Intelligencer" for two successive weeks, and in "The Press," a daily newspaper published in said city of Philadelphia, *ever* every other day for five times (copies of which said advertisements and the receipts for the payment therefor are hereto annexed, marked "Exhibit B B"), he was attended at his office, No. 611 Vine street, in said city, and at the office of Hon. Benjamin Harris Brewster, No. 706 Walnut street (to which place said audit towards its close was regularly adjourned), on Monday, April 14, 1873, at 4 o'clock p. m., and on April 21st, May 2nd, 16th, 23rd, June 6th, 20th, 27th, and 28th, 1873, the days to which the hearings were regularly adjourned and appointed, or some of said meetings, by Hon. Benjamin Harris Brewster and E. D. McLaughlin, Esq., counsel for William L. Manson, the accountant and testamentary guardian of decedent's children, William Henry Walters and Frederick L. Manson and Cecelia Mulford Manson; also by said William L. Manson in person.

Isaac C. Price, Esq., attorney for Peter Coates, Thomas Coates, and James Coates, claimants, as mortgagees and obligees.

James Lawrence, Esq., attorney for P. M. Minster, Catharine

Stewart, administratrix of Charles Stewart, dec'd; "Messrs.
32 Borlean and Tyson," and C. M. Henry, claimants, and also by said C. M. Henry in person.

B. F. Fisher, Esq., attorney for Robert Beaver, a claimant.

Abraham Stewart, Esq., attorney for F. C. Percival, a claimant.

Theodore McFadden, Esq., and David W. Sellers, Esq., counsel for Erastus Poulson, Esq.; "Messrs. Matthews, Poulson & Co.," and Frederick F. Burmeister, claimants, and said Erastus Poulson, Esq., in person.

Horace P. Wilbur, Esq., attorney for M. Deginther, a claimant.

A. H. Jones, Esq., attorney for "Messrs. Doran and Dorranie," claimants, and by J. M. Vanarsdalen, Esq., claimant.

The auditor first proceeded to vouch the account, a certified copy of which is hereto annexed, marked "Exhibit C," and found the same correct, as therein stated, both as to the charge and discharge thereof, with the exceptions of the items hereinafter referred to, to wit:

The item of credit of $302.50, "Stewart's undertaker's bill," appears upon examination to have been a clerical error, and should have been $203.50, making a difference of $99, with which the accountant asks to be surcharged, and which is accordingly done.

The item of $84 paid the Fidelity Trust Company for being security was, as appears by the testimony, a sum paid them by the accountant for their going his security as administrator in the matter of the sale of certain real estate of decedent, and, in the opinion of the auditor, should not be charged the estate, but as the accountant will be allowed hereafter in this report the usual commissions for the services and responsibility therein by him performed and incurred, the cost of obtaining security, if any, should not be charged the estate and credit specially for it.

The accountant is, therefore, also surcharged with the sum of $84.

With these exceptions and with the following explanation as to a certain other item, the auditor passes and allows said account.

The item of $3,240.96 was for goods, fixtures, &c., &c., mentioned in the inventory, which subsequently to the filing thereof were claimed by creditors of others as not belonging to decedent, and the case was tried upon the several feigned issues in district court of March term, 1870, Nos. 63 & 64, and the said goods, fixtures, &c., were decided not to be decedent's property, and therefore this — a proper credit and is allowed by the auditor.

Since the filing of the account the said accountant, as administrator aforesaid, has received in addition thereto the proceeds realized from sale of decedent's house and premises No. 1416 Sanson street, in the city of Philadelphia, sold under order of your honorable court, and asks to be surcharged with the net amount thereof in accordance with the supplimentary account filed with the auditor and hereto annexed, marked Exhibit "D;" which said supplementary account having been vouched to the satisfaction of the auditor, it is accordingly done, and said accountant surcharged with the sum of six thousand nine hundred and eighty-two $\frac{48}{100}$ dollars,

33 thus making balance on hands of the accountant, as per his original account filed and hereto annexed, marked Exhibit "C," being proceeds of real estate..... .... $7,886 69

From this must first be deducted the amount being excess of credits over the amount charged in the inventory 2,545 78

5,340 91

And to this must be added first the two amounts surcharged of $99 and $84..... 183 00

Also add net amount surcharged as per the supplementary account filed 6,982 48

Whole am't in hands of accountant.... .....$12,506 39

The following claim- were made, and, after being proved to the satisfaction of the auditor, as well as on several cases agreed upon by all parties in interest as correct, were allowed, and the auditor hereby awards them to be paid as follows, viz:

Claim presented by B. F. Fisher, Esq., attorney for Robert Beaver, of $127 and interest and protest, amounting together to the sum of $145. This claim was for goods, material, &c., sold decedent and for which her husband, as her agent, gave a note dated August 24th, 1870, at 30 days, said note since having been duly protested.

Claim presented by Abraham Stewart, Eqs., attorney for Frederick C. Percival, being $86.96, which is for debt, interest, and cost in a judgment obtained before Alderman Colgan.

Claim presented by James Lawrence, Esq., attorney for P. M. Minster, of $45.03, being for amount and interest due for professional services rendered in doctoring horses.

Also claim presented by Mr. Lawrence, attorney for Messrs. "Boilean and Tyson," of $60.75, with four years' interest thereon. The interest on this claim was disputed and finally the claim for interest withdrawn and the claim without interest (to wit, $60.75) allowed.

Also claim presented by Mr. Lawrence, attorney for C. M. Henry, of $150.68, with two years' interest. The claim for interest was here also contested and finally, with the approval of the auditor, adjusted amicably by the allowance of part of a year's interest, to wit, $10, and the claim, together with interest, making the sum of $160.68, is awarded.

Claim presented by Horace P. Wilbur, Esq., attorney for M. Degenther, of $100 for furniture, and was agreed upon by all parties in interest as correct and is allowed.

Claim presented by A. H. Jones, Esq., attorney for Messrs. Doran and Dorranie, of $44.28 was duly proven, found to be correct, and allowed.

Claim presented by E. D. McLoughlin, Esq., one of the counsel of the accountant, W. L. Manson, of $22.28, being costs paid by him upon an appeal of award of arbitrators in suit on mortgage, was found to be correct, duly vouched and allowed.

34 Claim of J. M. Vanarsdalen, Esq., for $100 for professional services rendered was admitted to be correct and allowed.

Isaac C. Price, Esq., counsel for Peter Coates, Thomas Coates, and James Coates, presented their claim for the sum of $6,000, with two years' interest thereon due Nov. 23, 1872, and also interest since that time. This claim is based upon a bond and mortgage given by William L. Manson and his wife, Sarah Jane (the decedent), to the said claimant, said mortgage bearing date May 23rd, 1863, and recorded July 5th, 1863, at Doylestown, Bucks Co., Penna., in Mortgage Book No. 41, p. 41, &c. The principal sum of $6,000 in said mortgage mentioned was payable in one year from date, together with interest half-yearly, and secured on premises (farm and mansion house) in Bensalem township, Bucks county aforesaid, containing 20 acres 3 roods and 22.94 perches, and being the property above referred to, and the balance in the hands of the accountant in the original account hereto annexed, marked "Exhibit —," being wholly composed of the proceeds realized from the sale (under the proceedings and order of court) of said premises, by which said sale said mortgage was discharged. The claim for any interest since the date of sale was objected to. The sale was made in pursuance of an order of the orphans' court for the payment of the debts of decedent. The property being in Bucks county, the lien of the mortgage thereon was discharged and transferred to the proceeds of said sale, to wit, to part of the very funds now for distribution, and they became liable for the payment of the principal of said mortgage and interest thereon up to the date of said sale only. This view seems fully sustained in the case of Gorden *vs.* Shalleross, 4 American L. Reg., 309, and other kindred cases. The language of the above-recited case is as follows:

"Though a mortgage on the sale of the premises under a prior incumbrance is entitled to receive (besides the principal) interest out of the surplus proceeds only to the day of sale, yet it still continues to run on the debt secured, until the actual receipt of the money in final distribution. Hence on such cases the creditor may subsequently recover, in an action on the bond, any interest which has accrued between these two periods, notwithstanding that the mortgage itself has been satisfied." While this, in the opinion of the auditor, fully establishes the view he has above taken, yet it is equally well settled that while the mortgage may thus be discharged and interest thereon as a lien only allowed until the day of sale, the interest since could be recovered upon the bond accompanying the mortgage if sued upon, and, if so, the bond having been before the auditor, as well as the mortgage, he is of opinion the claimant has a lien upon the fund, not only for the principal of the mortgage and interest to the day of sale, but that for the interest, since he has a claim upon said bond against the fund to be distributed the same as any other debt due by the estate. Ordinarily the award should be made separate in accordance with the above, but as it will be seen from the distribution hereafter made the result will be the same, the auditor awards the sum of $6,000, with interest

35 thereon, to wit, two years and eight months, $960, making together the sum of $6,960 to be paid said claimants, Peter, Thomas, and James Coates.

Benjamin Harris Brewster and E. D. McLaughlin, Esqs., present their claim for $800 for professional services, which is allowed and awarded to be paid.

There has been no change made in the accounts for commissions to the administrator, as will be observed by reference thereto, the amount now claimed being 5 per cent. on the amount in the inventory (less that part judicially ascertained not to belong to decedent) of the personalty, to wit, on $1,146.25, and also 3 per cent. on the proceeds of real estate coming into the hands of the administrator. The accountant, as will be seen, has actually advanced considerable money for the payment of the debts of the decedent. The commissions claimed are reasonable, and in the opinion of the auditor should be allowed. He therefore awards to be paid Wm. L. Manson commissions as follows, to wit: The sum of $57.30, commissions on personal property, and $471.75, commissions on real property, making together the sum of $529.05.

Theodore McFadden and David W. Sellers, Esqrs., presented claim of Erastus Poulson, Esq., Messrs. "Matthews, Poulson & Co.," and Frederick Burmeister, amounting to $5,592.73.

Evidence was produced before the auditor showing Mr. Poulson for a number of years had been the agent of decedent and transacted her business; that he had during said agency received various moneys, paid and advanced her various amounts, and had kept a long, careful, and continuous account thereof.

The principal facts connected with this account extend*ing* over many years (also involved the claims of Messrs. Matthew, Poulson & Co. and F. F. Burmeister) and were well known to the parties in interest before the auditor; and after considerable investigation between the parties and of said accounts and transactions an understanding was arrived at, mutually agreed upon, and settlement of said claim made, as fully set forth in "Exhibit E," hereto annexed, after the vouchers and the evidence of said joint claim had been fully and carefully examined and thoroughly cited by Mr. Manson, administrator and testamentary guardian aforesaid, and his counsel and Mr. McFadden, all of whom are perfectly satisfied with said claim.

Testimony was then produced before the auditor that the whole of said claim was justly due and owing; that said agent had accounted to the decedent for all he had collected as such agent, and that she had not paid any part of the amount now claimed.

That the above claim of $5,592.73 is the amount due, exclusive of interest or commissions, both of which, perhaps, if pressed, might be recovered; that while the claims were as above the claimants, in order to amicably adjust the same in a manner satisfactory to all parties, had agreed to accept in full payment therefor the sum of $5,220, and the same to be paid to W. L. Manson in manner set forth in said agreement dated June 28th, 1873, a copy of which is hereto annexed and marked "Exhibit E;" and said

agreement having been complied with, and Mr. Manson
36 having thus paid said claim as in said agreement provided, Benjamin Harris Brewster, Esq., on behalf of Mr. Manson, claim- the amount of $5,220, to be awarded to said W. L. Manson. After a careful examination of all the facts and circumstances of the case the auditor is of the opinion the original claim as made and established should be allowed, and that the adjustment of the same as has been made in accordance with said annexed agreement is judicious and of advantage to the estate, and he awards in accordance with said agreement and adjustment of the parties, which he recommends for the approval of the court, and that the sum of $5,220 thus advanced by the said W. L. Manson be paid to him.

Recapitulation of the Amount of Claims Allowed and Awarded.

Amount of balance in hands of accountant as above ascertained		$12,506 39
To Robert Beaver	$145 00	
Frederick C. Percival	86 96	
P. M. Minster	45 03	
Boilean & Tyson	60 75	
C. M. Henry	160 68	
M. Deginther	100 00	
Doran & Dorranie	44 28	
W. L. Manson	22 28	
J. M. Vanarsdalen	100 00	
Peter, Thomas, & James Coates	6,960 00	
B. H. Brewster & E. D. McLoughlin	800 00	
W. L. Manson, commissions	529 05	
W. L. Manson (for claim paid)	5,220 00	
	$14,274 03	

From the above it will be observed that all the claims cannot be paid in full, the funds in hand at present not being sufficient, and Mr. Manson, feeling desirous that none should be unpaid, requests that all except his claim for advances last alluded to be first paid in full, and that any deficiency of payment which shall arise in the distribution shall only effect his said claim, and that for whatever deficiency shall arise he will look to a subsequent account for payment should one be filed.

The question of compensation to the auditor was duly submitted to the parties in interest or their representatives, and the sum of $250 by them designated and fixed upon, which is satisfactory to the auditor.

The whole amount in hands of accountant			$12,506 39
From which must first be deducted the expenses of the audit as follows, viz:			
Costs to be paid clerk of orphans' court	$27 62		
Costs of advertising audit	6 00		
Auditor's fee (as agreed upon)	250 00		
		283 62	
Amount for distribution			$12,222 77
37 To Robert Beaver	$145 00		
Frederick C. Percival	86 96		
P. M. Minster	45 03		
Boilean & Tyson	60 75		
C. M. Henry	160 68		
M. Deginther	100 00		
Doran & Dorranie	44 28		
W. L. Manson	22 28		
J. M. Vanartsdalen	100 00		
Peter, Thomas, and James Coates	6,960 00		
B. H. Brewster and E. D. McLaughlin	800 00		
W. L. Manson (commissions)	529 05		
		9,054 03	
			$3,168 74

The above balance of $3,168.74 will, as above set forth, be paid on account of the amount awarded to William L. Manson, and leaving a balance due him of $2,051.26.

All of said amounts above awarded to be paid to the respective parties to whom it is awarded or their respective counsel.

At the request of your auditor searches were produced against said decedent and the administrator in the city and county of Philadelphia, and also from the county of Bucks; said searches are hereto annexed, and, in the opinion of your auditor, develop no other claims against said decedent or the estate, the sale of which produced the proceeds for said distribution and which are a lien thereon, than these hereinbefore provided for, as will be seen by reference thereto and the explanatory notes made thereon by your auditor.

The decedent died September 4, 1870, having first made and published her last will and testament, in writing, bearing date the 20th day of April, A. D. 1865, duly proved September 12, 1870, and remaining filed in the register's office for the city and county of Philadelphia, wherein and whereby she did devise and bequeath to her husband, W. L. Manson, all of the rents, issues, and profits of her real and personal estate during his lifetime, to use and apply the same for his own support and that of her children for the term of his life, and at death her said estate to be divided among her three children.

But as in this account there is not sufficient to pay the claims the question of distribution under the will need not arise.

Respectfully submitted.

JNO. L. SHOEMAKER, *Auditor.*

We, the undersigned, representing all the parties in interest in the above and foregoing estate of Sarah Jane Manson, dec'd, do hereby respectfully acknowledge the receipt and accept due
38 notice of the filing of the foregoing report in the office of the clerk of the orphans' court on Friday, the eighteenth day of July, A. D. 1873.

JOEL M. VANARSDALEN.
JAMES LAWRENCE,
Att'y for Borlien & Tyson, C. M. Henry, and P. M. Minster.
A. H. JONES,
Att'y for Ellwood Doran, Surviving Partner, &c.
HORACE P. WILBUR,
Att'y for M. Deginther.
ABRAHAM STEWART,
Att'y for Percival et al.
ISAAC C. PRICE,
Att'y for Coates et al.
THEODORE McFADDEN,
For Self, and
DAVID W. SELLERS,
Att'ys for E. Poulson, Esq., Matthews, Poulson & Co., & F. F. Burmeister.
B. F. FISHER,
For Robert Beaver,
Per WAGNER.

BENJAMIN HARRIS BREWSTER,
EDWARD D. McLAUGHLIN,
For Accountant.

STATE OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

I certify the foregoing to be a true copy of the report of John L. Shoemaker, Esq., auditor, upon the account of William L. Manson, administrator *c. t. a.* of Sarah Jane Manson, dec'd (without the accompanying documents), filed in the orphans' court for said county on the eighteenth day of July, A. D. 1873, and remaining of record in my office.

And I further certify that the said report was confirmed absolutely by the said court on the first day of August, A. D. 1873.

Witness my hand and seal of said court this twentieth day of January, A. D. 1875.

[SEAL.]

RICHARD ELLIS,
Clerk of Orphans' Court.

Endorsed: Manson's est. Certified copy of auditor's report.

39 In the Supreme Court of the District of Columbia, June 19, 1874.

WILLIAM L. MANSON, Complainant,
against
E. POULSON *et al.*, Defendants. } No. 3796, Equity Docket.

The President of the United States to Erastus Poulson, trustee, &c.; Frederick L. Manson, Cecelia M. Manson, and William H. W. Walters, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Endorsed: 3796. No. 3796, equity docket 13. Spa. to ans. Original bill. William L. Manson *vs.* Erastus Poulson. Issued June 19, 1874. Returned June 22, 1874. Not to be found. A. Sharp, marshal. June 22, '74. W. P. Bell.

In the Supreme Court of the District of Columbia, the 29th Day of July, 1874.

MANSON
vs.
POULSON *et al.* } In Equity. 3796, Doc. 13.

It is this day ordered that John J. Toner, Frank Henkels, and Samuel A. Welsh, of the city of Philadelphia, be, and they are hereby, appointed commissioners to appoint a guardian *ad litem* to take the answer of Cecelia M. Manson, infant defendant in above-entitled cause; and it is further ordered that Charles Schriver, S. McFarland, and G. M. Sharkey, of Kerrville, Texas, be, and they are hereby, appointed commissioners to appoint a guardian *ad litem* to take the answer of Frederick L. Manson, infant defendant in above-entitled cause.

By the court:

A. WYLIE.

Endorsed: Eq. 3796, doc. 13. Order for appointment of com'rs in Phila. & Kerrville, Texas, to appoint guardian to infant def'ts. M. 8, p. 209. Filed Jul- 29, 1874. R. J. Meigs.

40 In the Supreme Court of the District of Columbia, the 29th Day of July, 1874.

WM. L. MANSON
v.
ERASTUS POULSON *et al.* } In Equity. No. 3796, Docket 13.

The President of the United States to John H. Toner, Frank Henkels, & Samuel H. Welsh, of Philadelphia, Pa., Greeting:

Know ye that, because by a special order of said court in the above-entitled case, you have been assigned to appoint a guardian for the defendant Cecelia M. Manson, alleged to be under the age of twenty-one years, and by said guardian to take the answer of said infant defendant; these, *the* therefore, are to empower you or any two of you to go to said defendant, if she cannot conveniently come to you, and appoint a guardian for said infant and take the answer of said infant, by such guardian, upon his oath or affirmation, to be administered by you or any two of you; and, having so done, you are to send the same, closed up under your seals, together with your certificate of your having appointed such guardian as aforesaid, to the said court without delay.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

We whose names are hereunto subscribed in pursuance to the foregoing commission to us directed, did on the fifth day of August, 1874, cause Cecelia M. Manson, an infant in the said commission named, to come before us at Philadelphia, in the county of Philadelphia, in the State of Pennsylvania, and we then and there assigned William Knight Shryock, Esq., to be her guardian to answer and defend this suit on her behalf, and the answer of the said Cecelia M. Manson, the said infant, was taken and the said Wm. Knight Shryock, as guardian, was duly sworn to the truth thereof at the time and place aforesaid and by virtue of the said commission.

Before us—

SAMUEL A. WELSH,
JOHN J. TONER,
FRANK HENKLES,
Commissioners.

The answer of Cecelia M. Manson, defendant, to the bill of complaint of William L. Manson, complainant, filed against her and others in the supreme court of the District of Columbia, No. 3796, equity.

The said defendant says that she is an infant under the age of twenty-one years and that she claims such interest in the premises as she is entitled to and submits her said interests to the protection of this honorable court and prays to be hence dismissed with reasonable costs.

WM. KNIGHT SHRYOCK, *Guardian.*

41 Subscribed and sworn to before us the 5th day of August, 1874.

SAMUEL A. WELSH,
JOHN J. TONER,
FRANK HENKELS,
Commissioners.

Endorsed: 3796. Eq. Doc. 13. Manson *vs.* Poulson *et al.* Com'n to appoint guardian *ad litem* to Cecelia M. Manson and answer.

In the Supreme Court of the District of Columbia, the 29th Day of July, 1874.

WM. L. MANSON *vs.* ERASTUS POULSON *et al.* } In Equity. No. 3796, Docket 13.

The President of the United States to Charles Schriver, S. McFarland, and G. M. Sharkey, Kerrville, Texas, Greeting:

Know ye that, because by a special order of said court in the above-entitled case you have been assigned to appoint a guardian for the defendant, Frederick L. Manson, alleged to be under the age of twenty-one years, and by said guardian to take the answer of said infant, defendant, these, therefore, are to empower you, or any two of you, to go to said defendant, if he cannot conveniently come to you, and appoint a guardian for said infant and take the answer of said infant by such guardian, upon his oath or affirmation, to be administered by you, or any two of you, and having so done you are to send the same closed up under your seals, together with your certificate of your having appointed such guardian as aforesaid, to the said court without delay.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
[SEAL.] By L. P. WILLIAMS, *Ass't Clerk.*

We, whose names are hereunto subscribed, in pursuance to the foregoing commission to us directed, did, on the — day of ——, 1874, cause Frederick L. Manson, the infant in the said commission named, to come before us at Kerrville, in the county of Kerr, in the State of Texas, and we then and there assigned —— —— to *to* be his guardian to answer and defend this suit on his behalf; and the answer of the said Frederick L. Manson, the said infant, was taken, and the said —— ——, as guardian, was duly sworn to the truth thereof at the time and place aforesaid, and by virtue of the said commission.

Before us—

—— ——,
Commissioners.

The answer of Frederick L. Manson, defendant, to the bill of complaint of W. L. Manson, complain-t, filed against him and others in the supreme court of the District of Columbia, No. 3796, 42 equity.

The defendant says that he is an infant under the age of twenty-one years, and that he claims such interest in the premises as he is entitled to, and submits this said interests to the protection of this honorable court, and prays to be hence dismissed with reasonable costs. —— ——, *Guardian.*

Sworn and subscribed before us the — day of ——, 1874.

—— ——,
Commissioners.

Endorsed: 3796. Eq. Doc. 13. Manson *vs.* Poulson *et al.* Com'n to appoint guard'n *ad litem* to Frederick L. Manson and answer.

In the Supreme Court of the District of Columbia. In Equity. 3796.

To the honorable the judges of the said court:

The answer of Erastus Poulson, defendant, to the bill of complaint of William L. Manson filed against said Poulson and others in the said court, No. 3796, in equity, respectfully sets forth—

That, reserving all exceptions to the bill filed in this cause, he admits all the facts set out in said bill in reference to the death of said Sarah Jane Manson and of his being seized of said premises described in said bill as trustee as therein set forth; that he also admits all the other facts set forth in said bill, and submits himself to the orders of this honorable court and prays that he may be hence dismissed, with costs and charges in this behalf sustained. ERASTUS POULSON, *Trustee.*

Endorsed: No. 3796. Manson *vs.* Poulson *et al.* S. C. of D. C. In equity. Answer of Erastus Poulson, trustee. Filed Aug. 14, 1874. R. J. Meigs.

In the Supreme Court of the District of Columbia.

To the honorable the judges of said court:

The answer of William H. W. Walters, one of the defendants to the bill of complaint of William L. Manson, filed against him and others in the supreme court aforesaid, No. 3796, in equity.

The said defendant says that he claims such interest in the premises as he is entitled to and submits his interest to the protection of this honorable court, and prays to be hence dismissed with reasonable costs.

his
W. H. W. x WALTERS.
mark.

Witnesses present at signing:
JOHN J. TONER.
EMANUEL J. PAGE.

43 Endorsed: No. 3796, doc. 13. Manson *vs.* Poulson *et al.* S. C. of D. C. In equity. 3799. Answer of W. H. W. Walters. Filed Sep. 23, 1874. R. J. Meigs.

In the Supreme Court of the District of Columbia, the 4th Day of November, 1874.

WILLIAM L. MANSON
vs.
ERASTUS POULSON *et al.* } In Equity. No. 3796, Doc. 13.

Whereas by decree of court in this cause 29th day of July, 1874 three commissioners were named who were authorized to appoint a guardian *ad litem* to make answer for defendant Frederick L. Manson, and whereas said commission has been returned with answer that said defendant has removed from Kerrville, in the State of Texas, to the military post of the 4th U. S. cavalry, to which command he, the said defendant, is attached, and now stationed at Fort Clark, Texas; it is therefore this day ordered that Joseph Rendlebrock, P. Downey, and L. J. Levey, of Fort Clark, Texas, be, and they are hereby, assigned, in lieu of said former commission, to appoint a guardian for Frederick L. Manson, a minor defendant, and by said guardian take the answer of said infant defendant in this cause.

By the court:

A. WYLIE.

Endorsed: Equity. 3796, doc. 13. Wm. L. Manson *vs.* Erastus Poulson *et al.* Order for appointment of commissioners in Fort Clark, Texas, to appoint guardian to infant def't. M. 8, p. 257. Filed Nov. 4, 1874. R. J. Meigs.

In the Supreme Court of the District of Columbia, the 4th Day of Nov., 1874.

WILLIAM L. MANSON
v.
ERASTUS POULSON *et al.* } In Equity. No. 3796, Docket —.

The President of the United States to Joseph Rendlebrock, P. Downey, and L. J. Levey, of Fort Clark, Texas, Greeting:

Know ye that, because by a special order of said court in the above-entitled case you have been assigned to appoint a guardian for the defendant Frederick L. Manson, alleged to be under the age of twenty-one years, and by said guardian to take the answer of said infant defendant, these, therefore, are to empower you or any two of you to go to said defendant, if he cannot conveniently come to you, and appoint a guardian for said infant and take the answer of said defendant, by such guardian, upon his oath or affirmation, to be administered by you or any two of you, and, having so done,

you are to send the same, closed up under your seals together
44 with your certificate of your having appointed such guardian as aforesaid, to the said court without delay.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk.*

We, whose names are hereunto subscribed, in pursuance of the foregoing commission to us directed, did, on the first day of December, 1874, cause Frederick L. Manson, the infant in the said commission named, to come before us at Fort Clark, in the county of Kinney, in the State of Texas, and we then and there assigned Benjamin Evans to be his guardian to answer and defend this suit on his behalf, and the answer of the said Frederick L. Manson, the said infant, was taken, and the said Benjamin Evans, as guardian, was duly sworn to the truth thereof at the time and place aforesaid and by virtue of the said commission.

Before us—

JAS. RENDLEBROCK,
P. DOWNEY,
S. J. LEVEY,
Commissioners.

The answer of Frederick L. Manson, defendant, to the bill of complaint of William L. Manson, complain-t, filed against him and others in the supreme court of the District of Columbia. No. 3796. Equity.

The said defendant says that he is an infant under the age of twenty-one years, and that he claims such interest in the premises as he is entitled to and submits his said interest to the protection of this honorable court, and prays to be hence dismissed with reasonable costs.

BENJAMIN EVANS, *Guardian.*

Subscribed and sworn to before us the first day of December, 1874.

JAS. RENDLEBROCK,
P. DOWNEY,
S. J. LEVEY,
Commissioners.

Endorsed: No. 3796. William L. Manson *vs.* Erastus Poulson & others.

45 *Answer of Frederick L. Manson, Infant.*

Filed Dec. 9, 1874. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WILLIAM L. MANSON
vs.
ERASTUS POULSON *et al.* } In Equity. No. 3796, Doc. 13.

This cause coming on to be heard upon the pleadings and a certified copy of the confirmed report of the auditor of the orphans' court of Philadelphia and duly considered by the court as proper to grant the prayer of said complainant in said bill contained, it is, therefore, this 19th day of March, A. D. 1875, by the court ordered, adjudged, and decreed that the claim set forth in said bill and in favor of said complainant be, and is hereby, recognized as a valid lien against the property described in said bill, and that said property be sold and the proceeds of such sale be applied in satisfaction, first, of all proper taxes and assessments or other prior incumbrances due and unpaid upon said property, and, secondly, out of the balance the claim of said complainant to be paid and satisfied, and the remainder, if any, be distributed *per rata* between the heirs of Sarah M. J. Manson, deceased, and to the end W. P. Bell be, and he is hereby, appointed trustee, who, after giving bond with surety, to be approved by the court, in the penal sum of $5,000, conditioned for the faithful performance as well of this as of any future decree that may be passed in said cause, shall proceed to make sale as aforesaid of said property by first giving five days' notice by advertisement in one or more newspapers published in the city of Washington and on the terms following, to wit, one-third cash, balance in three equal instalments, with interest at seven per centum and payable in six, twelve, and eighteen months after date, the said deferred payments to be secured by deed on the property; that as soon thereafter as conveniently may be done the said trustee shall make report of said sale to the court, accompanied with affidavit of the fairness of such sale, and upon final ratification of the same the said trustee shall convey to the purchaser or purchasers by good and sufficient deed all right, title, and interest of said defendants or any of them as of said complainant in and to said property.

By the court:

A. WYLIE.

Endorsed: 3796. In equity. 3796, doc. 13. Manson *vs.* Poulson. Decree app'g W. P. Bell trustee to make sale. M. 9, p. 128. Filed Mar. 18, 1875. R. J. Meigs.

Know all men by these presents that we, Ann E. Bell, Isaac L. Johnson, and Wm. Pierce Bell, of the city of Washington, in the

District of Columbia, are held and firmly bound unto the
46 United States of America in the full and just sum of five thousand dollars, current money, to be paid to the said United States of America or their certain attorney; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this — day of March, in the year eighteen hundred and seventy-five.

Whereas by a decree of the supreme court of the District of Columbia, holding a special term, bearing date on the 17th day of March, A. D. 1875, and passed in a cause in the said court, wherein William L. Manson is complainant and Erastus Poulson and others are defendants, the above-bound Wm. Pierce Bell has been appointed trustee to make sale of certain real estate in the proceedings in said cause mentioned:

Now, the condition of the above obligation is such that if the above-bounden Wm. Pierce Bell do and shall, well and faithfully, perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void; otherwise to remain in full force and virtue in law.

A. E. BELL. [SEAL.]
I. L. JOHNSON. [SEAL.]
W. P. BELL. [SEAL.]

Signed, sealed, and delivered in presence of—
RALPH BELL,
As to A. E. & W. P. Bell.
GEO. B. STONE,
As to I. L. Johnson.

Approved:
A. WYLIE.

Endorsed: No. 3796, eq. doc. Manson *vs.* Poulson *et al.* Trustee's bond. Filed Mar. 23, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WILLIAM L. MANSON *vs.* ERASTUS POULSON *et al.* } Equity. No. 3796, Doc. 13.

To the honorable the judge holding the said equity court:

The report of Wm. Pierce Bell, trustee appointed by the decree in this cause to make sale of certain real estate therein mentioned, shows—

That after giving bond with security for the faithful discharge of his trust, as required by said decree, and giving notice of the time, place, manner, and terms of sale by advertisements in the National Republican and Evening Star, newspapers published in the city of

Washington, and for the time prescribed by said decree,
47 which time was extended by postponement also duly advertised in both said newspapers, he did, pursuant to said advertisements, attend in front of the premises on Tuesday, the 6th day of April, 1875, and then and there proceed to sell said real estate in said decree and advertisement fully set forth; that at such time there appeared and was present a goodly number of people, and, upon the property being duly offered by the auctioneer to the highest bidder, the said piece of ground and improvements was sold to Frederick Volk, he being then and there the highest bidder therefor, at and for the sum of twenty-five hundred dollars, and he, the said trustee, has since taken the first cash payment and the notes of said purchaser for the full payment of said purchase-money agreeably to said decree.

Which is respectfully submitted.

W. P. BELL.

DISTRICT OF COLUMBIA, } ss:
Washington City, }

On this 21 day of April, 1875, before the subscriber personally appeared the within-named W. P. Bell, trustee, and made oath that the matters and things stated in the foregoing report are true, to the best of his knowledge and belief, and that the sale therein reported was fairly made.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS, *Ass't Clerk.*

Endorsed: Equity. 3796, doc. 13. Manson *vs.* Poulson *et al.* Trustee's report. Filed April 21, 1875, in open court. R. J. Meigs, clerk, by R. J. Meigs, Jr., ass't clerk. Filed Apr. 21, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia.

It is this 21st day of April, 1875, ordered that the sale made and reported by Wm. Pierce Bell, trustee for the sale of certain real estate, be ratified and confirmed unless cause to the contrary be shown on or before the 15th day of May next, provided a copy of this order be inserted in some paper printed at Washington once in each of three successive weeks before the said day.

The report states the amount of sale to be $2,500.

By the court:

A. WYLIE.

Endorsed: Eq. 3796, doc. 13. Wm. L. Manson *vs.* Erastus Poulson *et al.* Order *nisi.* M. 9, p. 168. Filed Apr. 21, 1875. R. J. Meigs.

48 Washington Law Reporter, a journal of legal intelligence published every Tuesday, $5.00 per annum in advance. John L. Ginck, publisher; Hugh T. Taggart, editor.

WASHINGTON, D. C., *May* 13, 1875.

Mr. Wm. Pierce Bell to Washington Law Reporter, Dr., 633 F street.

To adv'g notice of sale, Manson *v.* Poulson, 3 sq., 3 t..... $6 00
Affidavit 25

$6 25

Received payment, J. L. GINCK.

On this 17th day of May, A. D. 1875, personally appeared before me, the undersigned, a notary public in and for the county and District aforesaid, —— ——, being personally well known to me, and made oath in due form of law to the following statement, viz., that affiant is the publisher of the "Washingson Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" on the 27th day of April and the 4th and 11th days of May, 1875.

JOHN L. GINCH.

Sworn and subscribed before me the day and year above written.

WM. H. MINNIX,
[SEAL.] *Notary Public.*

WM. PIERCE BELL, *Solicitor.*

In the Supreme Court of the District of Columbia.

MANSON
vs.
POULSON, Trustee, *et al.* } No. 3796, Eq. Dock.

It is this 21st day of April, 1875, ordered that the sale made and reported by Wm. Pierce Bell, trustee for the sale of certain real estate, be ratified and concirmed unless cause to the contrary thereof be shown on or before the 15th day of May next, provided a copy of this order be inserted in some paper printed at Washington once in each of three successive weeks before the said day.

The report states the amount of the sale to be $2,500.

By the court:

ANDREW WYLIE, *Justice, &c.*

A true copy.
Test: R. J. MEIGS, *Clerk.*

In the Supreme Court of the District of Columbia.

MANSON
vs.
POULSON *et al.* } Equity. 3796, Docket —.

Ordered that the sale reported on 21st day of April, 1875, be, and the same is hereby, ratified and confirmed, no cause to the

49 contrary thereof having been shown, although notice appears to have been given as directed by preceding order.

The trustee is allowed for commission $105, and it is further directed that the auditor examine the bill of the auctioneer and report to the court his opinion as to its reasonableness, together with the evidence which he may take in making such examination.

By the court:

A. WYLIE.

Endorsed: Equity. 3796. Manson *vs.* Poulson *et al.* Final order of ratification. M. 9, p. 200. Filed May 18, 1875. R. J. Meigs.

In the Sup. Court of D. C.

WM. L. MANSON *vs.* ERASTUS POULSON *et al.* } In Equity. # 3796.

This is to certify that out of the proceeds of sale, made by virtue of decree in said cause, of property in said pleadings described I have received from my solicitors, Messrs. W. P. Bell and Edw. D. McLaughlin, the full amount due and payable to me of said proceeds—that is, the full sum for which said property was sold, less the expenses and incumbrances.

WM. L. MANSON, [SEAL.]
Complainant, Philadelphia.

Endorsed: Equity. 3796. Manson *vs.* Poulson. Eq. 3796. Filed Mar. 31, 1880. R. J. Meigs.

True copies of all proceedings in the above cause.
Test:
[SEAL.]

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

Replication.

Filed Oct. 8, 1892.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON *vs.* CHARLES C. DUNCANSON. } In Equity. No. 14017.

The complainant hereby joins issue with the defendant.

C. H. ARMES,
Attorney for Complainant.

50 *Assignment to Secure Fees.*

Filed Oct. 13, 1892.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

For and in consideration of services rendered me in the above-entitled cause by Charles H. Armes, of Washington, D. C., as attorney-at-law, I hereby assign and set over to him one-half of my interest in the above-entitled cause and the money claimed therein.

Washington, D. C., October 12, 1892.

F. L. MANSON.

Testimony of Frederick L. Manson.

Filed Oct. 19, 1892.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

DISTRICT OF COLUMBIA, *ss:*

Be it remembered that at an examination of witness begun and held on the 12th day of October, 1892, and continued by adjournment until the 14th day of October, 1892, when the within depositions were taken, I, John A. Sweeney, an examiner in chancery, did cause to be present at my office, No. 482 La. Ave., in the city of Washington, in said District, the complainant, Frederick L. Manson, to testify for and on his own behalf in a certain cause now pending in the supreme court of the District of Columbia wherein Frederick L. Manson is complainant and Charles C. Duncanson is defendant.

JOHN A. SWEENEY,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

WASHINGTON, D. C., *Oct. 12th*, 1892.

Met pursuant to notice at the office of the examiner, No. 482 La. Ave.

Present: C. H. Armes, Esq., solicitor for complainant, Henry Wise Garnett, Esq., solicitor for defendant, the examiner, and—

51 FREDERICK LOUIS MANSON, the complainant, who, being produced as a witness of lawful age on his own behalf, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined—

By Mr. ARMES:

Q. Mr. Manson, state your full name, your age, your place of residence, and what interest, if any, you have in this suit.

Mr. GARNETT: I object to the form of the question.

Mr. ARMES: I will change the form of the question and — what interest you claim in this suit?

A. My full name is Frederick L. Manson. My age—that is an open question. I cannot swear to my exact age. I know when I enlisted that my father told me I was twenty years old; that would make me 39. That is the only satisfactory source I can get any information from.

Q. Was he present when you enlisted?

A. Yes, sir.

Q. Where did you enlist?

A. Philadelphia, Pa.

Q. When?

A. 3rd April, 1873.

Q. What regiment?

A. 4th cavalry, troop G.

Q. Did you give where you reside?

A. Rockford, Ill.

Q. You are a citizen of the United States?

A. Yes, sir.

Q. State what interest you claim to have in this suit, or, in other words, what relation you bear to this suit.

A. The complainant.

Q. Who were your parents—what was the full name of your father?

A. William Louis Manson.

Q. What was the maiden name of your mother?

A. Sarah Margaret Jane Mulford.

Q. Is your father dead or is he now living?

A. He is dead.

Q. When did he die?

A. In 1877.

Q. Where?

A. In Philadelphia.

Q. Is your mother now living or is she dead?

A. She is dead.

Q. When did she die?

A. Sept. 4th, 1870.

Q. Where were your parents residing at the time of her death?

A. They were residing in Andalusia, Bucks Co., Pa.

Q. Was that their permanent residence and place of business?

52 A. No; their place of business was in Philadelphia.
Q. In what business were they engaged at that time?
A. In the pawnbroker business.
Q. Where?
A. 916 Locust St.
Q. What city?
A. Philadelphia, Pa.
Q. From what place was your mother buried?
A. From my grandmother's house—that is, my father's mother's, 1603 Mount Vernon St., Phila.
Q. Were you present?
A. Yes, sir.
Q. What children other than yourself had your parents?
A. Well, I had a sister—that is, what children they had at the time of their death, you mean?
Mr. ARMES: Yes. What children had they living at the time of her death?
A. I had a half-brother, William Henry Walters, and my sister, Cecelia Mulford Manson.
Q. How was Walters your half-brother?
A. By my mother's former marriage before she married my father.
Q. I want to know whether he was your half-brother on account of any relationship on your father's side or your mother's side—whose son he was, whether your mother's or father's.
A. He was my mother's son.

Mr. GARNETT: That is objected to. Witness stated he (the half-brother of witness) was the son of the mother of witness by a previous marriage, and his name was Walters.

Q. Had your mother any other children in her lifetime than the three mentioned?
A. No, sir.
Q. State whether or not those three children were living at the time of your mother's death.
A. Yes, sir.
Q. Were they present at the time of her burial?
A. Yes, sir.
Q. Look at the paper I hand you, marked Exhibit M No. 1, D, which purports to be a copy of the last will and testament of one Sarah Margaret Jane Manson, and state if you knew the parties mentioned therein; read the will over.
A. My mother's name, Sarah Margaret Jane Manson—I knew her; my father, William L. Manson—I knew him; Frederick L. Manson, that is myself; William Henry Walters—I knew him, and Cecelia Mulford Manson—I knew her.
Q. Do you know after whom Cecelia Mulford Manson was named?
A. She was called Cecelia; I don't know why her Christian name——

53 Mr. GARNETT: I object to any inference of the witness.

WITNESS (continuing): And she was called Mulford, I presume, after my mother; that being my mother's maiden name.

Q. Do you know whether or not your father married again after the death of your mother?

A. Yes, sir.

Q. Did he or not and when?

A. Yes, he did, in the latter part of 1871 or the fore part of '72.

Q. Before or after your enlistment?

A. Before.

Q. State whether or not your father in his lifetime or *or* any other person prior to 1892 informed you that you had any interest in the property mentioned in this case or in any other property in the city of Washington?

A. Yes; Mess. Birney & Birney, the lawyers, informed me in 1891 that I had an interest.

Mr. ARMES: I meant to say in 1891.

Q. Prior to that time what knowledge, if any, did you have — any interest, present or future, vested or contingent, in said property or any property in the District of Columbia?

A. No knowledge whatever.

Q. State the circumstances under which you received the information that led to the institution of this suit.

A. I received a letter from Mess. Birney & Birney, a firm of lawyers here in Washington, about the 4th or 5th of August, 1891.

Q. To what effect?

A. Stating that I was an heir to some property here.

Q. What did you do then?

A. Well, I wrote back to Birney & Birney and inquired what made them think I was an heir to some property.

Q. What property did that prove to be?

A. Then they wrote me a letter and described the property—well, they described some property my mother owned and they asked me if I was the Frederick Louis Manson.

Q. Is that the property in this suit?

A. Yes, sir; in the post-office condemnation, and they informed me that immediate action was necessary.

Q. How long after that was it before you came here?

A. I came here on the 15th of August.

FREDERICK L. MANSON.

Sworn and subscribed to before me this 15th day of October, 1892.

JOHN A. SWEENEY,
Examiner in Chancery.

Whereupon the further examination of this witness was adjourned until Friday, the 14th of October, 1892, at the same place, at 11 o'clock a. m.

54 OCT. 14, 1892—11 o'clock a. m.

Met, pursuant to adjournment, at the same place as before.
Present: Same parties as before.

Whereupon the examination of FREDERICK L. MANSON was continued.

By Mr. ARMES:

Q. What is your native State, Mr. Manson? In other words where were you born?
A. Philadelphia, Pa.
Q. I made inquiry at our last examination whether you knew the parties mentioned in a paper I handed you purporting to be a copy of the will, and you stated that you knew the several parties named there, calling their names respectively, including Cecelia Mulford Manson. Who were the parents, if you knew, of Cecelia Mulford Manson?
A. William L. Manson and Sarah Margaret Jane Manson.
Q. You have stated that you enlisted on the 3rd of April, 1873, at Phila., Pa. State, if you please, what your enlistment was, whether in the army or navy.
A. In the army—general mounted service of the army.
Q. Did you enlist in a regiment or troop?
A. I was assigned to troop G, 4th Cav., after I enlisted.
Q. 4th U. S. cavalry?
A. Yes, sir.
Q. How long did you serve in the 4th U. S. Cav.; in other words, when were you finally discharged?
A. On June the 12th, 1881, I think.
Q. Who was the recruiting officer under whom you enlisted at Philadelphia?
A. Captain George Robinson, 10th Cav.
Q. Were there any scars or marks upon your person that were noted upon your enlistment papers for purposes of identification?
A. Crooked little finger on left hand.
Q. Was your father present during that enlistment in such place as to hear all that was said and noted and all that transpired during the enlistment?
A. Yes, sir.

Mr. GARNETT: I object to that as immaterial.

Q. Look at the paper I hand you, purporting to be a certified copy of your enlistment papers, and state whether or not you are the identical person mentioned therein.
A. Yes, sir.

Mr. ARMES: I offer this paper in evidence, to be marked Exhibit F. L. M., No. 1.
Mr. GARNETT: I object to it as immaterial and irrelevant. I object to that last question and answer for the same reason also.

55 Q. How near to the District of Columbia were you stationed at any time during your enlistment—the nearest point?

A. St. Louis, Mo., was the nearest point.

Mr. GARNETT: I object to that question and answer as immaterial.

Q. When did you first visit Washington after the death of your mother?

A. In February, 1883.

Mr. GARNETT: Same objection.

Q. How long were you here then?

A. About two weeks.

Q. What was the object of that visit here then?

Mr. GARNETT: Same objection to all these questions and answers.

A. I came on to secure a clerkship in the quartermaster's office.

Q. Did you succe-d?

A. No, sir.

Q. Where did you go to when you left Washington then?

A. To Fort Leavenworth, Kan.

Q. Did you engage in business there?

Mr. GARNETT: Same objection.

A. I was a clerk for the Government.

Q. When here in February, 1883, why didn't you make inquiry about your interest in this property?

A. I didn't know I had any.

Q. When did you receive the first intimation you ever had of any interest or possible interest of yours in this property, or of your sister or half-brother?

Mr. GARNETT: Objected to.

A. Of my sister's or half-brother's interest in the property?

Q. In this property.

A. In August, 1891.

Q. From whom?

A. Birney & Birney.

Mr. GARNETT: All of this has been testified to at the last sit-ing. Same questions exactly.

Q. What did you do upon receiving that intimation?

Mr. GARNETT: Same objection.

A. I wrote back and asked them what reason they had to think I was an heir to any property here.

Q. When did you come to Washington on that subject, and what did you do after you reached here?

A. I arrived in Washington, I think, August the 15th, 1891, and I made arrangements with Birney & Birney and yourself to look after my interest in this case.

56 Q. State whether or not you were stationed as a soldier at Fort Clark, Texas, in November and December, 1874.

A. Yes, sir.

Q. What knowledge, if any, or information did you receive at Fort Clark or elsewhere of any proceeding having reference to the appointment of a guardian for yourself in an equity proceeding in the supreme court of the District of Columbia, entitled William L. Manson *vs.* Erastus Poulson, trustee, and others, and numbered 3796, or any other suit in the District of Columbia?

Mr. GARNETT: Mr. Examiner, I object to that as immaterial and impertinent, and the proceeding cannot be attacked in this way, and that evidence is inadmissible in such a proceeding as this.

A. No knowledge or information whatever.

Q. Did you know one James Rendlebrook, of your regiment?

A. I think his name was Joseph; he was my captain.

Q. Did you know one P. Downey, in your regiment?

A. Yes, sir.

Q. Did you know one L. J. Levey, of your regiment?

A. Yes, sir.

Q. Did you appear before them for the purpose of having them select a guardian for you?

A. No, sir.

Q. Did you know one Benjamin Eavns, of your regiment?

A. Yes, sir.

Q. Did you appear before him and make any answer to him as your guardian?

A. No, sir.

Q. Did they or either of them ever mention the subject of their appointment of a guardian to you?

A. No, sir.

Q. Did you ever hear directly or indirectly in any way any intimation of such proceeding as I have just referred to?

A. No, sir.

Mr. GARNETT: Same objection to these questions and answers, Mr. Examiner.

Q. When did you last see your sister, Cecelia Mulford Manson?

A. In 1873.

Q. Where was she then residing?

A. With my father, 725 North 16th St., Philadelphia.

Q. Was your mother living there also?

A. No, sir; my mother was dead.

Q. When did you last hear from her directly?

A. In 1876.

Q. How did you hear from her then?

A. She wrote me a letter.

Q. Do you know whether she is living or dead?

A. I do not.

57 Q. When did you first visit Philadelphia, Pa., after you enlisted in the army?

A. In August, 1891.

Q. State whether or not you made any search for your sister then.

A. Yes, sir.

Q. What search or inquiry did you make and in what part of the city?

A. I enquired thoroughly in the neighborhood where we had lived—in the neighborhood of Sixteenth and Brown—also of all of the associates of my sister in her younger days, and nobody had heard anything of her since 1879. That is the last information I could get of her.

Q. State whether or not you advertised in any newspapers and in how many newspapers, if any, for her.

A. Yes, sir; I advertised for two weeks, I think, in three different newspapers in Philadelphia.

Q. Did you make any inquiries in Andalusia?

A. Yes, sir; I inquired of the neighbors in Andalusia. They knew nothing of her.

Q. Did you inquire of any persons who had been coemployees of her?

Mr. GARNETT: I object to this form of question as leading and suggestive.

Mr. ARMES: It is a little leading. You may strike it out and I will change the form of the question.

Mr. GARNETT: I adhere to my objection.

Q. State whether or not you know of any persons who had been employed in business places with your sister.

Mr. GARNETT: That is objected to as immaterial.

A. Yes, sir.

Q. What, if any, inquiry did you make of such persons concerning your sister?

Mr. GARNETT: Same objection, as leading.

A. I enquired when they had last seen or heard of her.

Q. With what result?

A. And they knew nothing of her later than 1879. In fact, I might add that that is the universal opinion of all her associates and acquaintances.

Mr. GARNETT: That is objected to. The opinion of associates or acquaintances is not admissible and it is immaterial.

Q. How many visits have you made to Philadelphia in search of your sister and half-brother?

A. Three.

Q. With what result?

A. No result whatever; could not find anything of her.

Q. Have you any relatives in Philadelphia, that you know
58 of, of whom you have failed to make inquiry as to her present whereabouts or whether she is dead or alive?

A. I have not.

Mr. GARNETT: Same objection.

Q. State whether or not you have done all in your power to ascertain whether or not your sister is now living or dead.

Mr. GARNETT: Objected to as leading and immaterial.

A. Yes; I have done all in my power.

Q. With what result?

A. No result whatever; cannot find her.

Q. As a result of those efforts, I will ask you to state your belief as to whether she is dead or alive.

Mr. GARNETT: That is objected to, as the witness's belief is not evidence and not admissible.

A. I believe she is dead.

Q. What inquiries have you made in reference to the whereabouts or existence of your half-brother, William Henry Walters, whom you have mentioned?

A. I made inquiries about my half-brother, William Henry Walters, at the same time that I made inquiries for my sister.

Q. With what result?

A. With no result whatever.

Q. Are you able to state whether he is dead or alive?

A. I am not.

Q. As a result of the inquiries you have made and the information you have received, give your belief and best judgment as to whether or not he is living or dead.

Mr. GARNETT: Same objection. His belief and judgment are absolutely immaterial and incompetent.

A. From information received from inquiries while in Philadelphia and Andalusia I believe that my half-brother, William Henry Walters, and my sister, Cecelia Mulford Manson, are both dead.

Mr. GARNETT: The latter part of your answer is objected to as voluntary and not responsive to the question and because it has already been stated.

Q. When did you next visit Washington after February, 1883?

A. In August, 1891.

Q. How long have you known the firm of Birney and Birney or any of the attorneys you employed here to look after your interest?

A. I have known them personally since 1891, when I first came to Washington.

Q. Had you any knowledge of them before that?

A. No, sir.

59 Cross-examination.

By Mr. GARNETT:

Q. Mr. Manson, when were your father and mother married?
A. I don't know, sir.
Q. Where?
A. I say I don't know.
Q. I asked you, first, when, and, second, where, and you still say you don't know.
A. I don't know.
Q. Do you know whether they were ever married or not?

Mr. ARMES: I object to that question.
Mr. GARNETT: I insist upon the question. If he refuses to answer I will have to have it certified to the court by the examiner.
Mr. ARMES: I object to that question on the ground that the question is wholly immaterial and irrelevant, as the papers under which the defendant in this suit claims to derive his title show expressly that this complainant's parents were husband and wife.
Mr. GARNETT: The papers do not show any such thing, and I will stand by the record on that point.
The WITNESS: I refuse to answer it.
Mr. GARNETT: I will have it certified then.
The WITNESS (answering): I don't know.

Q. Where did they live when you first recollected anything about them?
A. In Philadelphia.
Q. Did you live there up to the time of your enlistment?
A. I lived in Philadelphia at the time of my enlistment.
Q. Did you live there up to the time of your enlistment? Did you ever live anywhere else?
A. I lived in Andalusia, Bucks Co., Pa.
Q. Anywhere else?
A. Not that I remember.
Q. You enlisted on the 3rd day of April, 1873, you state?
A. Yes, sir.
Q. Did you live with your parents up to the time of your enlistment?
A. I lived with my father and stepmother when I enlisted.
Q. Up to the time of the death of your mother did you live with your mother?
A. Yes, sir.
Q. And after that you continued to live with your father and stepmother?
A. Yes, sir.
Q. In Andalusia?
A. Yes, sir.
Q. You enlisted on the 3rd day of April, 1873, and at that time you were 20 years of age?
A. I presume so.

60 Q. You said your father told you you were 20 years of age. You gave your age as twenty years. To the best of your knowledge and belief you were twenty years of age at that time?

A. Yes.

Q. Were you immediately assigned to the 4th regiment of cavalry?

A. I was sent to St. Louis and assigned to the 4th regiment of cavalry. I went to St. Louis possibly a month afterwards—troop G.

Q. Did you always serve in the same troop?

A. No, sir.

Q. In the year 1874 what troop were you in?

A. In 1874 I was in G troop. I was transferred to M in 1875, I think.

Q. In 1875, you think?

A. Yes, sir.

Q. Then, from the time you enlisted in '73 to '75, you served in G troop, and then transferred to troop M?

A. Yes, sir.

Q. Who was the captain of troop G during all that period?

A. Capt. Joseph Rendlebrook.

Q. Same captain?

A. Yes, sir.

Q. Do you know where he is now?

A. I understand he is dead.

Q. You understand he is dead?

A. Yes, sir; in fact I know he is dead, because I inquired at the War Department.

Q. After you left home did you correspond with any one?

A. Yes, sir.

Q. Who did you correspond with?

A. My father.

Q. How often did you correspond with him in 1873 and '74?

A. Why, I corresponded with him possibly for six months.

Q. After you enlisted?

A. After I enlisted, but I never received any answers to my letters, so correspondence gradually ceased.

Q. Did you correspond with any other member of the family at home?

A. I got two letters, I think, from my sister in 1876 and answered them.

Q. Independent of those two letters did you have any other correspondence?

A. Yes, sir; I received a letter from my stepmother in 1877.

Q. Did you receive any letters from any of them in 1874?

A. No, sir.

Q. Did your parents ever live in Washington city?

A. I believe that they have. I don't remember the fact of their living here, but I——

Q. Were you not living with them during the war when your mother was living here?

A. That I don't know. I cannot remember if I was.

61 Q. You say you were 20 years old in 1873; do you remember 1863 when you were 10 years old?

A. In 1863 I remember very distinctly living in Andalusia, Bucks Co.

Q. Can't you remember from '60 to '63?

A. No, sir; I cannot. My first recollection was '63.

Q. Then you cannot remember anything previous to the time you were 10 years old, is that correct?

A. Yes, sir; I guess it is.

Q. You remember nothing before that as to where you lived?

A. Not about where I lived.

Q. Do you remember being with your mother anywhere else except in Andalusia?

A. Andalusia and Philadelphia are the only places that I distinctly remember of ever living in.

Q. Then, if Mrs. Sarah Margaret Jane Mulford, afterwards known as Sarah Manson, ever lived in Washington, in this property, you have no recollection of it?

A. No, sir.

Q. None at all?

A. No, sir.

Q. You state you remember in '63; you remember after that, I suppose, of your whereabouts, don't you?

A. Yes, sir.

Q. Where were you in the year 1864?

A. I think I was in Andalusia, Bucks Co.

Q. Was your mother there?

A. Yes, sir.

Q. She was there continually on from that time to the time of her death?

A. I think so, sir; yes, sir; she might be gone for a day or so. My first recollections were in Andalusia, and we lived there for 16 or 17 years.

Q. Right straight along?

A. Yes, sir; right along.

Q. In 1874, July, 1874, where was your troop stationed? Maybe I can refresh your recollection; was your troop ever stationed in Kerrville, Texas?

A. Yes, sir.

Q. Was it stationed there in July, 1874?

A. My recollection is that it was.

Q. Where did you go from there?

A. Fort Clark, Texas.

Q. Did you know in Kerrville, Texas, Charles Schreider?

A. No, sir.

Q. Did you know S. McFarland?

A. No, sir.

Q. Did you know G. M. Sharkey?

A. No, sir.

Q. What time was it, do you remember, that your tro-p left Kerrville and moved to Fort Clark, about?

62 A. I think it was in August.

Q. Have you any acquaintances in Kerrville that you know now by name?

A. No, sir.

Q. Did you receive any letters from any one in Washington in July, August, September, or October, 1874, inquiring about persons to appoint as commissioners to take your answers to the suit pending here?

A. No, sir.

Q. Mr. Manson, your captain, Joseph Rendlebrook, has certified over his own handwriting, in cause 3796, in the case of William L. Manson *vs.* Erastus Poulson, that on the 1st day of December, 1874, he and two other commissioners, whose names I will give you directly, caused you to appear before them for the purpose of appointing a guardian for you.

The WITNESS: I stated I never appeared before them.

Q. I will state again, your captain has certified that at Fort Clark, on the first day of December, 1874, you appeared before the three commissioners, and you say if he said so it is untrue?

A. I say I never appeared before them.

Q. What position did Mr. Downey hold in your troop?

A. He was a private.

Q. Where is he now? Was he a private in your troop in December, 1874?

A. Yes, sir.

Q. Where is he now?

A. I think he is in Indianapolis, Ind.

Q. Do you know what business he is pursuing there?

A. I don't know.

Q. What is his first name, if you know; he is signed "P." here?

A. Patrick.

Q. He also joins in the same certificate that you appeared before him with your captain, and that they appointed a guardian *ad litem* for you, and you state that it is not so?

A. I say I never appeared before them.

Q. What position did L. J. Levey hold in your troop?

A. He was the company's clerk.

Q. What was his first name?

A. Samuel; Samuel J. Levey.

Mr. GARNETT: It is printed by the typewriter L. J. Levey; that is probably a mistake of the clerk.

Q. Where is he at present?

A. I don't know where he is.

Q. He joined in that same certificate, and you still say you did not appear before them?

A. Yes, sir.

Q. In 1874, at Fort Clark, did you go before these gentlemen or see these gentlemen at all about any matters of business on the 4th day of December?

A. No, sir.

63 Q. You did not?

A. No, sir; I did not.

Q. You mean to state, Mr. Manson, that you did not do that, after having called your attention to that certificate of all three of these gentlemen, that you have no recollection of doing it?

A. I mean to say I did not appear before them.

Q. Did you have any conversation with them at all?

A. Never.

Q. About a business matter?

A. No, sir.

Q. You had no conversation with them about an important business matter—about a suit in Washington?

A. No, sir.

Q. Did you know Benjamin Evans?

A. Yes, sir.

Q. Was he a member of that troop?

A. Yes, sir.

Q. What position did he hold?

A. Well, he was a private most of the time. I think towards—he was a private when he joined the troop, but before I left it he was made a corporal—just before he committed suicide.

Q. He is dead, is he?

A. Yes, sir.

Q. Then two of these gentlemen are now dead; one you don't know where he is, and the third you think is in Indianapolis?

A. I think so, sir.

Q. Were you not aware that your mother had some property in the city of Philadelphia?

A. In the city of Philadelphia? I understand she had property there; in fact, I knew it, because I collected rents there.

Q. But you did know?

A. Yes, sir.

Q. Do you know your estate was wound up there in '73 or '74?

A. No, sir; I did not know it.

Q. Were you not connected with — at all?

A. No, sir.

Q. Did you institute no inquiries about it?

A. No, sir; in 1877 I received a letter from my stepmother stating that my father was dead, and that she hardly had money enough left to bury him and that there was nothing left.

Q. You say you never instituted any inquiries about this real estate of your mother's of which you collected rents?

A. No, sir.

Q. You did not know that that had been disposed of in '73 or '74?

A. No, sir.

Q. You state you knew she had real estate there. Don't you know she had property or some claim to property in Washington or didn't you ever hear of any such claim?

64 A. No, sir; I never knew she ever had any real estate or property in Washington.

Q. Didn't you ever hear anything about it?

A. I heard they lived in Washington. I understood as a child when I lived in Andalusia that they had lived in Washington, but whether they had property or had any claim here I did not know.

Q. Didn't you hear anything at all about it?

A. About it?

A. About claiming to own some interest in property in Washington.

A. No, sir.

Q. You were twenty years old before you left your home, as you state?

A. Yes, sir.

Q. And up to that time you never heard they claim- ownership to any property in Washington?

A. No, sir.

Q. So far as you knew they had no claim?

A. So far as I knew they had no claim to any property in Washington.

Q. And you knew nothing about any other property except this property you say you collected rents for?

A. Well, this Andalusia property, of course—of course I naturally presume she owned this because she lived there so many years.

Q. When was that wound up?

A. I don't know.

Q. Did you institute inquiries about any of that after your father's death?

A. No, sir; because I got that letter from my stepmother saying that there was nothing left.

Q. And you took no step to make inquiries?

A. No, sir.

Q. You state that the first you knew of any claim or interest in property in Washington was from Birney & Birney?

A. Yes, sir.

Q. You did not hear from Birney & Birney previous to that time?

A. No, sir.

Q. Afterwards did they state how they acquired the information?

A. When I got their first letter I wrote back and asked them what reasons they had for thinking I was an heir to some property, and in answering my letter I don't just exactly remember the words they used, but the substance of it was that there was reasonable grounds to suppose I was the person.

Q. You then came to Washington in August and saw Birney & Birney?

A. Saw Birney & Birney; yes, sir.

Q. Where did you meet Mr. Armes?

65 A. At Mr. Birney's office.

Q. Did they send for Mr. Armes?

A. I don't know whether they sent for him or not; he came in.

Q. Did they state to you how they learned that you had any claim to this property—how they had acquired the knowledge that you had any claim to this property?

A. Yes, sir; I think they explained to me how they got this information.

Q. What was the explanation?

Mr. ARMES: If this is relevant I have no objection to the witness stating it, but the fact of the matter is the whole situation was explained to the witness, and I will admit that on record.

Mr. GARNETT: It is best to let the witness tell it as it was told to him.

Mr. ARMES: The question is entirely irrelevant, but if they want the information I have no objection to it.

A. My recollection is that they informed me that the Government had condemned a lot of ground for a post-office site, and in examining the titles it was discovered that I was an heir to the property in question. That in substance is my recollection of how they came by the information.

Q. Who did they say discovered it?

A. I don't believe they individualized anybody. I just think they——

Q. Did they say it was discovered by the district attorney's office in examining the titles? Did they say it was discovered by the Government?

A. I don't believe it was stated——

Mr. ARMES: Don't give any impression. State what they told you.

Mr. GARNETT: State as near as you can. They stated in examining the title that this was discovered. Did they say who was making the examination?

A. No, sir.

Q. Did Mr. Birney state whether he was examining the titles?

A. No, sir; he did not.

Q. He did not say who was examining the titles, as you now recollect?

A. No, sir.

Q. Is Mr. Birney any longer your counsel in this case?

A. No, sir.

Q. When did he retire?

A. Some time in the spring. I don't know exactly what time. It was about—no, it was in the fall.

Q. Fall of '91?

A. Fall of '91. It was last November, I think.

Q. Did he give you any reason for retiring?

A. Yes, sir; in his letter of retiring he stated that——

66 Mr. ARMES: I object to the question as wholly irrelevant and immaterial.

WITNESS, continuing: He said that—the substance of his letter was that upon making examination he didn't feel like continuing.

Q. So that he retired from the case?

A. Yes, sir.

Q. Did you make a contingent contract with this gentleman about prosecuting the case, as regards fees?

Mr. ARMES: I object to that question as wholly immaterial and as a useless waste of time.

Mr. GARNETT: I insist on the question.

A. Yes, sir.

Q. I understand when you went to Philadelphia to make these inquiries about your sister and half-brother you testified how you inquired from persons who lived in the neighborhood where they formerly lived?

A. Yes, sir.

Q. You also state you put some advertisements in the papers?

A. Yes, sir.

Q. And I understand the result was you learned nothing about them.

A. Yes; I could get no information about them at any recent time; nothing since 1876 of my brother and nothing of my sister since 1879.

Q. You have no information about them since those dates?

A. No, sir.

Q. Have you copies of those advertisements?

A. Yes, sir; I think I have copies of them.

Q. I stated to you, Mr. Manson, that your captain and your two comrades and company clerk had certified to that paper. I find they not only certified to it, but according to their return of Benjamin Evans it is under oath. After being informed of the fact that it was under oath, you still retain your position?

A. Yes, sir.

Q. That you never appeared before them?

A. That I never appeared and never knew anything of it.

Q. Can you tell me where you were on the 4th day of December, 1874?

A. My recollection is that on that day I was at Fort Clark.

Q. Have you any recollection about that day whatever?

A. No, sir.

Q. Can you tell what day of the week it was?

A. No, sir.

Q. Have you any recollection of anything that occurred that day?

A. Nothing out of the ordinary.

Q. Can you name anything that occurred there in the month of December, 1874?

A. Yes, sir.

67 Q. What was that?

A. I know I left the post on the 28th day of December, 1874.

Q. Well, beyond that have you any recollection that happened there that month?

A. Nothing special; no, sir.

Q. Your captain was there at that time referred to, was he not—the captain of your troop?

A. Yes, sir.

Q. And all three of those, the captain I named and the three others, were present in the troop at that time?

A. All present at the time in the troop.

Q. What was your rank at that time?

A. A private.

Q. Was there any intimacy between you and Evans particularly?

A. No, sir.

Q. At that time was he a private or a corporal?

A. He was a private at that time.

Q. In 1874?

A. Yes, sir.

Q. Was Downing any particular friend of yours?

A. No, sir.

Q. You say that Samuel J. Levey was the company clerk?

A. Yes, sir.

Q. He was the person attending to the writing of the troop?

A. Yes, sir.

Q. And papers that would have to be executed or any record or writing in reference to any member of the troop would be likely to be executed before Levey? He would be likely to be called in about it?

A. No, sir, I don't think he would. He would be very likely to perform the writing, but as to being interested in any other way——

Q. He was the man to perform the clerical services of the troop at that time?

A. Yes, sir.

Q. That was his regular duty?

A. Yes, sir.

Q. You state your first recollection is in 1863 and living in Andalusia with your father and mother at that time?

A. Yes, sir.

Q. And they lived right straight on from that period in Andalusia?

A. Yes, sir.

Q. You stated later in the testimony, as I understand you, that you understood that they had lived in Washington. Who did you learn that from?

A. I learned it from hearing my mother and father talk.

Q. From hearing your father and mother talk?

A. Yes, sir.

Q. About what period had they lived in Washington?

A. Well, I don't know.

68 Q. You never lived away from your father and mother up to that time?

A. I never lived away from my father up to '63, when I was ten years old.

Q. You can't recollect previous to when you were ten years old, can you, Mr. Manson?

A. I don't think I can. My first recollection was living in Andalusia in 1863.

Q. How do you know that?

A. Because I went to school at Wells college.

Q. That was your first recollection of living anywhere?

A. Yes, sir.

Q. That was in 1863?

A. That was in 1863.

Q. Have you any recollection of moving from Andalusia to anywhere else?

A. No, sir.

Q. You stated that you had a stepbrother by the name of Walters. What was your mother's first husband's name?

A. I don't know.

Q. His first name?

A. I don't know.

Q. How much older than you was this stepbrother?

A. I think he was considerably older, possibly.

Q. I understand you to say his last name was Walters; that is a matter of inference, I understand you to say. It is a matter of reasoning from your brother's name?

A. Yes, sir.

Q. Of course, from no personal knowledge. The next question is, how much older were you than your brother?

A. My recollection is that he was six or seven years older than I was.

Q. You stated that your mother's full name was Sarah Margaret Jane Mulford. Where was she born, do you know?

A. No, sir.

Q. What were her parents' names?

A. They were Mulford, I know.

Q. Their Christian names?

A. I don't know what their Christian names were. I knew her. I have been with her when she visited her relatives.

Q. What relatives?

A. I don't know exactly. I know they were relatives.

Q. You know she visited some relatives by the name of Mulford and from that you inferred her name was Mulford. Do you know that her maiden name was Mulford?

A. Yes, sir; I can say I know her name was Mulford.

W. What relations were there relatives to her she visited?

Mr. ARMES: I object to this line of examination as entirely immaterial. I have not objected before because I wanted to give the widest latitude to the examination.

69 Mr. GARNETT: I have asked what his mother's name is and I have to know what he knows about it.

Q. What degree of relationship were these relatives who were named Mulford that your mother visited?

Mr. ARMES: I object to the question as entirely immaterial.

A. My mother's uncle.
Q. Your mother's uncle.
A. Yes, sir.
Q. That is the only knowledge—positive knowledge—is it, you have as regards her maiden name?
A. I know from living with her that her family name was Mulford, that her relatives' names were Mulford, and I know that as well as I can know anything like that.
Q. Are any of these relatives now living?
A. I have made search for them and never found anything of them.
Q. You don't know, then?
A. No, sir.
Q. What was the uncle's name you say you visited, named Mulford?
A. I don't know what his Christian name was, but he was Dr. Mulford.
Q. Where did he live?
A. At Camden, New Jersey.
Q. You say your parent's place of business was in Philadelphia; do you mean to say they resided in Andalusia and did business in Phila.?
A. Yes, sir.
Q. How far is Andalusia from Philadelphia?
A. 12½ miles.
Q. You state in your examination that your mother was buried from your grandmother's house—that is, your father's mother's house. What was your father's mother's name?
A. Taggart.
Q. T-a-g-g-e-r-t?
A. I think T-a-g-g-a-r-t.
Q. Are any of your father's relatives now living?
A. Not that I know of.
Q. What was the age of your sister in 1873?
A. She must have been about 17, I guess.
Q. When did you say you left the service?
A. June 12th, 1881, I think.
Q. And you resided at Rockford ever since that time?
A. No, sir.
Q. Where were you mustered out?
A. I was discharged at Fort Supply, Ind. Ter.
Q. What troop did you then belong to?
A. M, 4th Cav.
Q. Troop M, 4th cavalry?
A. Yes, sir.
Q. Where did you then go?
A. I went from there to Fort Leavenworth, Kas.

70

Mr. GARNETT: That is objected to as immaterial, in the first place, and in the second place there would be necessarily no record there about it.

A. Yes, sir.

Q. What was done to bring any record from Fort Clark, if anything?

A. Telegrams were sent by the War Department to the commanding officer of Fort Clark, Texas.

Q. With what results?

A. There was nothing in the records of the post of Fort Clark, Tex., showing anything of the transaction.

Q. How in reference to the company records of your troop?

Mr. GARNETT: The question and answer are objected to, as it is not a matter referring to the commanding officer of Fort Clark, Texas, or troop matter.

A. A telegram was also sent to the commanding officer of troop G, directing him to inspect the records and ascertain if they showed anything about this matter.

Mr. GARNETT: Same objection, Mr. Examiner, and because it is absolutely improper and inadmissible to show what records do or do not show.

Q. In reference to your examination on the subject of the Philadelphia property, when did you enquire of any one in Philadelphia concerning the disposition made of your mother's property there?

A. In 1888.

Q. What inquiry did you make then?

A. I wrote a letter to Ed. McLaughlin.

Q. Did you receive a reply?

A. Yes, sir.

Q. Have you the letter now?

A. No, sir; I don't think I have it.

Q. What information did you receive from him in reply?

A. The substance of that letter was——

Mr. GARNETT: I object to that.

Witness continuing: —that he had supposed I was dead; that he had assisted in settling my mother's estate; that she had made very bad investments during the latter years of her life and died very much involved, and that it would be a useless expenditure of time and money for me to attempt to disturb the settlement.

Q. You said that Mr. Birney was no longer of counsel; that he had withdrawn from the case and gave his reasons for withdrawing. Have you heard from Mr. Birney since, and in what way, by letter or otherwise?

73 A. I have; by letter.

Q. Have you the letter with you?

A. Yes, sir.

Q. Produce it.

(Witness hands Mr. Armes a letter.)

Q. So that is the letter? Have you seen Mr. Birney write?
A. Yes, sir.
Q. Is this his handwriting?
A. To the best of my knowledge it is.

Mr. ARMES: I introduce the letter in evidence and ask that it be marked Exhibit F. L. M. No. 2.
Mr. GARNETT: I object to that as immaterial and incompetent.

Recross-examination.

By Mr. GARNETT:

Q. Have you got the envelope that this letter was in, Mr. Manson?
A. Yes, sir.
Mr. GARNETT: Please produce the envelope.
Mr. GARNETT: The letter does not seem to have gone through the mail. Where did you receive it?
A. Here in Washington.
Q. At Mr. Birney's office?
A. No, sir.
Q. Whose office?
A. At the court-house.
Q. From Mr. Birney in person?
A. No, sir.
Q. From whom?
A. From Mr. Armes.
Q. On the day it was written—Oct. 8th?
A. I don't recollect the day. I have been here several days. It was about that time.

FREDERICK L. MANSON.

Subscribed and sworn to before me this 15th day of October, A. D. 1892.

JOHN A. SWEENEY,
Examiner in Chancery.

Mr. ARMES: I now introduce in evidence certified copies of three deeds referred to in the bill of complaint and being respectively from William R. Woodward and James W. Barker, to release Erastus Poulson, trustee, and from William L. Manson and wife to Erastus Poulson, and from James W. Barker and wife and William L. Manson and wife to William R. Woodward, and marked respectively Exhibits F. L. M. No. 3, F. L. M. No. 4, and F. L. M. No. 5.

I also offer in evidence the record in the case of William L. Manson *vs.* Erastus Poulson *et al.*, No. 3796, in equity, supreme
74 court of the District of Columbia, together with the letter of Capt. Rendlebrook filed therein, enclosing the form of appointment of guardian for F. L. Manson, to be marked Exhibit F. L. M. No. 6.

I further offer in evidence that portion of the record of the District court in the condemnation proceedings of square 323 for a city post-office, showing that the firm of Birney & Birney appeared for said F. L. Manson in that proceeding on August 17th, 1892.

Mr. GARNETT: I object to the introduction of a portion of the record in the condemnation proceedings last referred to, in the first place, because it is not a court record in the ordinary sense of the term, and must be proved as a fact, and, secondly, because the whole record of that proceeding should be introduced or none at all.

JOHN A. SWEENEY,
Examiner in Chancery.

EXHIBIT F. L. M. No. 1. John A. Sweeney, Examiner in Chancery.

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
WASHINGTON CITY, *January 15th*, 1892.

Pursuant to section 882 of the Revised Statutes, I hereby certify that it appears from the records of the adjutant general's office that the annexed document is a true copy of the original on file.

J. C. KELTON,
Adjutant General.

Be it known that J. C. Kelton, who signed the foregoing certificate, is the adjutant general, U. S. Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereo- I have hereunto set my hand and caused the seal of the War Department to be affixed on this [SEAL.] fifteenth day of January, one thousand eight hundred and ninety-two.

L. A. GRANT,
Assistant Secretary of War.

1. Insert title of office.
2. To be signed by the officer in charge of the office.

(Form No. 9.)

THE UNITED STATES OF AMERICA.

STATE OF PENNSYLVANIA, } ss:
City or Town of Philadelphia, }

I, Frederick L. Manson, born in Philadelphia, in the State of Pennsylvania, aged twenty years and — months, and by occupation a compositor, do hereby acknowledge to have voluntarily enlisted, this third day of April, 1873, as a soldier in the Army of the United States of America for the period of five years, unless sooner discharged by proper authority; and do also agree to accept from the United States such bounty, pay, rations, and clothing as are
75 or may be established by law; and I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America, and that I will serve them honestly and faithfully

against all their enemies whomsoever, and that I will obey the orders of the President of the United States and the orders of the officers appointed over me according to the rules and articles of war.

FREDERICK L. MANSON. [SEAL.]

Subscribed and duly sworn to before me this 3rd day of April, A. D. 1873.

GEORGE ROBINSON,
Captain 10th Cavalry, Recruiting Officer.

NOTE.—Scars and marks found upon the person of a recruit will be here noted: Crooked little finger, left hand.

I certify on honor that I have carefully examined the above-named man agreeably to the general regulations of the army, and that, in my opinion, he is free from all bodily defects and mental infirmity which would in any way disqualify him from performing the duties of a soldier.

JNO. NEILL,
A. A. Surgeon U. S. A., Examining Officer.

I certify on honor that I have minutely inspected the above-named man, Frederick L. Manson, previous to his enlistment, and that he was entirely sober when enlisted; that, to the best of my judgment and belief, he is of lawful age, and that I have accepted and enlisted him into the service of the United States under this contract of enlistment as duly qualified to perform the duties of an able-bodied soldier, and in doing so have strictly observed the regulations which govern the recruiting service. This soldier has blue eyes, dark hair, fair complexion; is 5 feet 6 inches high.

GEO. ROBINSON, [SEAL.]
Captain 10th Cavalry, Recruiting Officer.

Declaration of Recruit.

I, Frederick L. Manson, desiring to enlist in the Army of the United States for the term of five years, do declare that I have neither wife nor child; that I am of the legal age to enlist, and believe myself to be physically qualified to perform the duties of an able-bodied soldier; and do further declare that I have never been discharged from the United States service (Army or Navy) or any other service on account of disability or by sentence of either civil or military court or in any case except with good character and for the reasons given by me to the recruiting officer prior to this enlistment.

Given at Philadelphia, Pa., this 3rd day of April, 1873.

FREDERICK L. MANSON.

Witness:
EDWARD DUFF,
Private G. M. S.

76 *Consent in Case of Minor.*

I, William L. Manson, do certify that I am the father of Frederick L. Manson; that the said Frederick L. Manson is twenty years of age, and I do hereby freely give my consent to his enlistment as a soldier in the Army of the United States for the period of five years.

Given at Philadelphia, Pa., the 3rd day of April, 1873.

WILLIAM L. MANSON.

Witness:
EDWARD DUFF,
Private G. M. S.

No. 8. 243.

Frederick L. Manson, enlisted at Philadelphia, Pa., on the 3rd day of April, 1873, by Capt. Geo. T. Robinson, 10th regiment of cavalry, R. O. — enlistment; has served in — regiment of —; discharged ——, 18—.

Directions.

Enlistment for the general service must, in all cases, be made in triplicate. The recruiting officer will send two copies to the superintendent with his monthly return and a third to the depot at the time the recruits are sent there. In cases of soldiers re-enlisted in a regiment or of regimental recruits two copies only will be made, which will be forwarded to regimental headquarters, one copy for file, the other to accompany the monthly regimental recruiting return.

N. B.—In case of re-enlistment the declaration of recruit will not be filled in, but it will be stated on the margin whether the soldier is single or married, and the number of children, if any. The prefix "re" will be added to the word "enlisted" where it occurs, and the assignment to company and regiment filled in below.

Received A. G. O.
Assigned to — regiment of —, U. S. Army.

EXHIBIT F. L. M. No. 2. John A. Sweeney, Examiner in Chancery.

William. Arthur A.

Birney & Birney, attorneys-at-law, 458 Louisiana avenue.

WASHINGTON, D. C., *October 8th*, 1892.

Mr. Frederick L. Manson, Rockford, Ill.

SIR: I am informed that my withdrawal as one of your counsel in your claim for the award made for parcel 15, sq. 323 (post-office condemnation), is being used to prejudice your case.

This is not right. The bill filed by Mr. Armes in your
77–100 behalf exhibits the claim in a light in which I did not view it or consider it, and makes a case which I think should suc-

ceed, as well founded in law. You are at liberty to make any use of this letter which may be of aid to you.

Very respectfully, A. A. BIRNEY.

* * * * * * *

101 In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } Equity. No. 14017.

WASHINGTON, D. C., *Nov.* 10*th*, 1892.

Met, pursuant to notice, at the office of Henry Wise Garnett, No. 416 Fifth St. N. W., at 2 o'clock p. m., for the purpose of taking testimony on behalf of defendant in above-entitled cause.

Present: Charles H. Armes, on behalf of complainant, and Henry Wise Garnett, on behalf of defendant, and the examiner.

102 Whereupon EDWARD D. MCLAUGHLIN, a witness of lawful age, produced for and on behalf of defendant, and having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Direct examination.

By Mr. GARNETT:

Q. I think you have given your name in full?
A. Yes, sir.
Q. Your age and business?
A. 48 years old; and business, attorney-at-law.
Q. Where?
A. In Philadelphia, Pa.
Q. How long have you been in practice?
A. Since November, 1865.
Q. I will ask whether you knew the late Sarah Margaret J. Manson.
A. I knew her and represented her during her lifetime, and settled up her estate after her death.
Q. She is claimed to be the mother of the plaintiff in this suit, Frederick L. Manson?
A. She was the mother of Frederick L. Manson.
Q. Who states he was a private in the United States cavalry?
A. Yes, sir.
Q. Same man, is it?
A. Yes, sir.
Q. When you first got acquainted with the deceased, Sarah Margaret Jane Manson, where was she living?
A. At Andalusia, Bucks Co., Pa.
Q. Do you know whether she lived in the city of Washington during the war and before she moved to Andalusia?
A. She lived in the city of Washington.
Q. Was she married at the time she lived in the city of Washington?

Mr. ARMES: I object to the question as to whether or not she was married when she lived in the city of Washington on the ground that the marriage of Mrs. Manson is set forth in the proceedings in the equity cause in which the defendant Duncanson claims to have acquired title.

A. To the best of my knowledge she was married.

Q. What was her occupation and business in Washington when she lived here?

A. I don't know. I can only tell that from her own statement to me.

Q. Did you ever have any conversation with her about it, or was there any statement made in her presence that would give you any knowledge of the fact?

Mr. ARMES: Do you mean professionally, Mr. Garnett?

Mr. GARNETT: I mean just what I say.

103 A. I know she kept a house of prostitution in Philadelphia, and she also had one in Washington.

Mr. ARMES: This is objected to as entirely immaterial and irrelevant.

Q. Do you know whether she owned any separate estate in the city of Washington?

A. She had property on 12th St., as I recollect; one or two houses on 12th St.

Q. Below the Avenue?

A. Yes, sir; below the Avenue.

Q. You stated you attended to her business after 1865 until the time of her death?

A. Not after '65; probably from 1866 until the time of her death.

Q. Till the time of her death?

A. Till the time of her death.

Q. Do you know what time she moved from Washington and *and* went to live in Andalusia?

A. No; I do not know that.

Q. Where was she during the war?

A. Here.

Q. In the city of Washington?

A. Yes; in the city of Washington.

Q. Did you have anything to do with the probate of her will after her death?

A. I was one of the witnesses to her will.

Q. Please look at this certified copy of her will which I hand you, which is marked Exhibit A and filed in equity cause No. 3796, and state whether it is a correct copy of the will and whether you attended to the probating of that will in Philadelphia.

A. Yes, sir; I recognize the signature of the deputy register, John H. Campbell, and I was one of the witnesses, and I recognize the signature of Benjamin H. Brewster as the other.

Q. Did you attend to the probating of that will?

A. Yes, sir.
Q. In Philadelphia?
A. Yes, sir.
Q. Do you know why the will was not acted on as regards the real estate in the District of Columbia?
A. The will was not executed according to the laws of the District of Columbia in respect to transferring real estate.
Q. In what respect?
A. There were only two witnesses to the will. The will was drawn by Mr. Brewster.
Q. Do you remember when she died?
A. In 1870—in September, '70, she died.
Q. Did you attend to the settling up of her accounts?
A. Yes; in conjunction with Mr. Brewster. I was his assistant at that time.

104 Q. Please state, Mr. McLoughlin, what was the condition of her estate at the time of her death—whether insolvent or not—in regard to her personal estate.

Mr. ARMES: I object to that as immaterial.

A. Insolvent. All her real estate in Pennsylvania was sold by authority of the orphans' court to pay her debts under my supervision.
Q. Was there any property in Washington sold?
A. And that was sold and divided, and proceedings were begun here to sell her Washington property.
Q. Please look at that paper in your hands, which is filed with the bill, and state whether it is a certified copy of the auditor's report.
A. It is.
Q. Please state whether you know she was indebted to the firm of Poulson & Co., and Burmeister, who was formerly a pension agent in Philadelphia, I think.
A. She was.
Q. What was the extent of that indebtedness?

Mr. ARMES: I object to any testimony in relation to any claims upon the estate which witness says was settled in the orphans' court in Philadelphia, the record being the best evidence.

Mr. GARNETT: What was the extent of that indebtedness?
A. The claim was $5,592.73.
Q. And the paper in your hand is a certified copy of the proceedings before the auditor?
A. It is a certified copy of the auditor's report upon the audit of account of the administrator *c. t. a.* of Mrs. Manson.
Q. Had you as her attorney any knowledge of the duration of time that that indebtedness to that firm had existed?
A. It extended over a long series of years.

Mr. ARMES: That is stated in the auditor's report of what transpired during the proceedings.

Q. Can you give us any idea of the length of time?

A. To the best of my recollection, 8 or 10 years. It covered a period fully of ten years, and probably longer.

Q. Did Mr. Poulson hold any business relations with Mrs. Manson?

A. He was her agent, and he used to advance her money in large amounts. The account was a very large one, and there were a great many items, both charges and credits, and that is the balance.

Q. You said you attended to the settling up of her estate there?

A. Yes, sir; I did.

Q. Was there any balance left as due to her creditors after selling the real estate and personalty in Pennsylvania?

Mr. ARMES: I object to this line of examination for the reasons given.

105 A. Yes; there was a balance as shown by this report of $2,051.26 due after exhausting all the estate and personalty in the State of Pennsylvania, both the real estate in Bucks county, Andalusia, and the real estate in the city of Philadelphia.

Q. To whom was that due?

A. It was due to William L. Manson.

Q. How did the balance come to be due to him?

A. He requested the orphans' court to direct all the debts except the claim of Poulson & Co. and the Burmeister debts to be paid in full, and that the remainder of the estate should be applied to that debt as far as it would go, that being done with the consent of those creditors, and that he would pay the balance, whatever that would be, out of his own pocket. It amounted to $2,051.26, and he said he would stand in their shoes as a creditor to that amount of the estate. That was done, and the auditor so reported to the court and the court confirmed the report.

Mr. ARMES: That is objected to.

Q. Now, what steps, if any, were taken by Mr. William L. Manson to collect the money then due him from the estate of Sarah Margaret Jane Manson?

A. I had charge of that proceeding also. I instructed Mr. William Pierce Bell, an attorney of this city, to take whatever steps were necessary to collect that money for Mr. Manson out of the decedent's real estate in this city.

Q. You mean the house on 12th street, mentioned in the proceedings of the creditors' bill?

A. Yes, sir; I mean the property on 12th St.

Q. Please look at that paper, which is the bill in equity cause No. 3976, and state whether that is the bill you refer to.

A. Yes, sir.

Q. Do you know whose writing that is on the back of that bill?

A. Mr. Bell's.

Q. Please look at the body of the bill and state in whose handwriting it is.

A. The body of the bill is in the handwriting of Emanuel J. Page, a student in my office at that time.

Q. Is that the property which is described in the bill, the house on 12th St., which belonged to Mrs. Manson?

A. Yes, sir.

Q. Do you know how she acquired the property? Do you know whether she acquired it by any gift or conveyance *of* from her husband?

A. I don't think she got it from her husband.

Q. What were her husband's means?

A. None, except what she gave him. The bill was prepared in the office of Mr. Bell, who sent it to me, and I put in the amounts and dates, &c. Then I sent it back to him after the jurat was made.

Q. You had it sworn to?

106 A. Yes, sir.

Q. Do you know anything about the taking of the answer of the daughter, Cecelia Mulford Manson?

A. Yes, sir; I attended to that. That was done in my office.

Q. That was attended to in your office?

A. That was done in my office. These three commissioners who were appointed to take her answer were in my office at that time.

Q. Please look at that commission and see if it is the one you superintended the preparation of.

A. Yes, sir; I recognize all the signatures.

Mr. GARNETT: Mr. Examiner, this is the commission to appoint a guardian for Cecelia M. Manson, filed in equity No. 3796.

Q. How do you know anything about the answer of the defendant Poulson, as trustee?

A. That answer is in my handwriting except the number up here, in equity No. 3796, which was in Mr. Bell's handwriting. That is Poulson's signature as trustee. I had that done also.

Q. Was this commission ever signed as it purports to be?

A. Yes, sir.

Q. The commission of Cecelia M. Manson and the answer of Poulson were signed in your presence in your office?

A. Yes, sir.

Q. Please look at this answer of William H. W. Walters and say if you know anything about that.

A. That is also in my handwriting except the signatures of the witnesses.

Q. Was that signed by Walters, the defendant?

A. That mark was placed there by him in my office.

Q. Did you know the defendant Walters and the defendant Cecelia M. Manson?

A. Yes, sir.

Q. What has become of Cecelia Manson?

A. I have not heard anything of her for a number of years.

Q. Where was she when you last heard from her?

A. I could not tell you when it was, but I knew she was married. I met her, and she told me she was married.

Mr. ARMES: Don't say anything of what she told you.

Q. Do you know what has become of the defendant Walters?

A. I don't think I ever saw him since he signed that paper.

Q. About how old a man was he at the time he signed that paper?

A. Well, I should say he was between 25 and 30 years old. I could not say exactly.

Q. Mr. McLoughlin, do you know anything about the appointment of the guardian to take the answer of the defendant, Frederick L. Manson?

A. I know it was done.

Q. You know it was done?

A. Yes, sir; it was done through Mr. Bell, who reported to me.

107 Q. Did you receive any communications at any time from Mr. Manson?

A. I received a letter from Frederick L. Manson.

Q. Have you that letter with you?

A. I have it with me. I received a letter dated November 12th, 1874, from F. L. Manson.

Q. Where was that letter written?

A. At Fort Clark, Texas.

Q. Have you the letter?

A. Yes, sir.

Q. Please read the letter.

WITNESS:

Mr. Edward McLoughlin:

It becomes necessary for me to inform you, in accordance with your epistle of Nov. 3rd, that I require no guardian, as I am not a minor, but 22 years of age last October, so whatever might be done in the matter, as far as I am concerned, I will have no representative but myself. If it becomes necessary to dispose of said property inform me about what it will bring and what my share, if I receive any, will be, and I will answer you immediately. I hope you are enjoying good health. My captain informed — that he received a — regarding some property, but never informed me of its contents. Hoping to hear from you soon,

Respectfully, FRED. L. MANSON,
Co. G., 4th U. S. Cav.

That is a letter. I sent it to Mr. Bell and got it back.

Q. Had you written to Mr. Manson?

A. Yes, I did, on the 3rd of November, as the letter there says.

Q. What did you write him?

A. I wrote him notifying him of the proceedings to sell this property.

Q. This property on 12th street?

A. Yes, sir.
Q. You are still speaking of your letter to him?
A. Yes, sir.
Q. You notified him that you instituted proceedings to sell this property?
A. Yes, sir.
Q. Do you know what you said in that letter?
A. I look- for a copy of that letter; I thought I kept one, but I found I have none. I cannot remember what I said in it.
Q. What object did you have in writing it?
A. My object was to secure service on him or some notification so that we could get a decree to sell the property.
Q. And in reply to that you received this letter?
A. In reply I received this letter.

Mr. GARNETT: I offer this letter in evidence. Please mark it E. McL. No. 1.

108 Q. Did you receive anything further from him?
A. Mr. Bell sent me this letter which is dated on the same day, the 12th of November, 1874, from Fort Clark, Texas, written to Mr. Bell.

Mr. GARNETT: Let me see the letter.

Q. Was the William L. Manson, the complainant in this suit, the William L. Manson who was the husband of Sarah Margaret J. Manson; was he the father of Frederick L. Manson?
A. I don't know. He told me once he was not his father. He said in my office that these were not his children; that is all I know about it. They passed as his children. William L. Manson told me that none of them were his children; he told me that in confidence.
Q. Do you know anything about the age of that boy?
A. Only what is contained in the petition in reference thereto.
Q. Why was it you had a commission issued for him as a minor?
A. William L. Manson, the complainant, told me he was a minor.
Q. He told you he was a minor?
A. Yes; he told me he was a minor. I didn't know his age at all.
Q. And in consequence of that this commission was issued?
A. In consequence of that this commission was issued.
A. And this letter which Mr. Bell forwarded to you was his reply?
A. Yes, Mr. Bell sent me that letter.

Mr. GARNETT: I offer this letter in evidence, to be marked Exhibit E. McL. No. 2.

Q. Please read the letter.
The WITNESS:

FORT CLARK, TEXAS, *Nov.* 12*th*, 1874.

Mr. Wm. Pierce Bell.

DEAR SIR: Being informed by my captain that he received a letter regarding some property which I was an heir to, and on receiving a letter from Mr. McLoughlin, 706 Walnut St., Phila., I write informing you that I am not a minor, but 22 years of age, and anything regarding such property will be, as far as I am concerned, acted upon by my authority, as I have no other representative; anything — the above will be answered by me. McL. states that he wants to sell the property; if so, let me know for what price and what my share will be, if any. With my kind regards, I am,

Respectfully,

F. L. MANSON,
Co. G., 4th U. S. Cav.

Q. Did you call the attention of Mr. William L. Manson, the reputed father of this boy, to his statement that he was over age?

A. I called his attention to that after receiving the letter.

Q. You called his attention to that, and what did he say?

A. He informed me the boy was under age. When that
109 letter came I undoubtedly showed it to him and asked him for an explanation, but cannot remember what it was, but from the fact that he went on with the commission he must have insisted upon it that the boy was not of age.

Q. You know nothing about the taking of the commission to Frederick L. Manson?

A. No, sir; I remember that the property was sold and the money divided. The money was turned over by the trustee under the direction of the court.

Q. Have you any other papers with you?

A. I have some other papers here I received from Mr. Bell.

Q. Do you know where Mr. Bell is at present?

A. Mr. Bell is dead, I understand. Mr. Duncanson said he was dead. I don't know whether these papers are important or not.

Q. I think you stated when Mrs. Manson died, I believe.

A. September, 1870.

Q. Do you know how the names of the commissioners to appoint the guardian for the infant Frederick L. Manson were obtained?

A. Mr. Bell attended to that. I don't know how they were obtained.

Q. Did you ever see this defendant, Frederick L. Manson, since?

A. Not since about '72 or '3; somewhere about there.

Q. He was a child at that time?

A. He was a child at that time.

Q. In 1872 or '3, not before that?

A. I think it was somewhere about 1870 that I saw him last.

Q. You said he was a child at that time?

A. Yes. I may have seen him after his mother's death, but I am not sure that I did. He lived with his father up to the time of his enlistment, I think.

Q. Do you know about what his age was in 1870?

A. Well, I should say 14, or something like that; 14 or 15.

Q. That is, judging from his appearance?
A. Yes, sir.

Mr. GARNETT (handing witness papers): I don't see anything in these papers that bears on that point at all.

Q. Is there anything else you know relative to the proceedings in this case of equity, No. 3796? And, if so, I would be glad to have you state it.
A. I don't remember anything. I believe you have pumped me dry.
Q. I think you have stated that this property on 12th St. was the separate property of Mrs. Manson acquired by her?
A. There is no doubt about it. Her husband had no property. From reading over the testimony of Frederick L. Manson this morning I notice that he says that he had no relatives that he knows of living. Well, there is an uncle of his living in Philadelphia, who is a half-brother of his father.
Q. What is his name?
A. Taggart. I saw him the other day. I cannot recall his
110 first name, but he is a half-brother of William L. Manson. He might be able to throw some light on the boy's age.
Q. You stated that you attended to the winding up of this estate before the auditor, and it came out over $2,000 short?
A. Yes, sir.
Q. You also stated that you attended to the affairs of Mrs. Manson since 1865? Do you know what her financial condition was from 1865 to '70?
A. She was always hard up at the time I knew her; always short.
Q. You mean to say she could not pay her debts?
A. No. She was always complaining she could not pay Poulson and Burmeister, and they were always pressing her——

Mr. ARMES: That is objected to.

WITNESS, continuing: That they were continually dunning her and pressing her for payment.
Q. Did she make any statement to you as to how long she had been indebted to these people?
A. Yes; I think she did; but I cannot recall definitely what she said about it.
Q. Was it for a long or short period of time?
A. It was accumulating gradually for a long time. They advanced her money and helped her when she was in the pawnbroker business. She had to give it up because she could not command capital enough to carry it on. That increased her indebtedness to Poulson.
Q. From your knowledge from 1865 was she solvent or insolvent when living in this Washington property?
A. I never knew her to be any other way but embarrassed.

Mr. ARMES: That answer is objected to.

Cross-examination.

By Mr. ARMES:

Q. Please state the date, as near as you can, when you last saw Cecelia M. Manson.

A. It is impossible for me to do so. The nearest I can come to it is that it was several years after the proceedings in Washington for the sale of that property.

Q. Was it since the year 1880?

A. I think not.

EDW. D. McLOUGHLIN.
EDW. D. McLOUGHLIN.

Subscribed and sworn to before me this third day of December, A. D. 1892.

JOHN A. SWEENEY,
Examiner in Chancery.

111 Subscribed and sworn to before me this 14th day of January, A. D. 1893.

JOHN A. SWEENEY,
Examiner in Chancery.

1. Further objections by counsel for the complainant, under the stipulation, to the testimony-in-chief above:

Mr. ARMES:

1. I object to the first question on page three for the reason that statements made by counsel to client *is* not admissible.

2. On page 6 I object to any statement of the witness as to the contents of that paper, the record itself being the best evidence (first question).

3. I object also to the second question, as that subject was a matter of inquiry before the auditor, and the record of that proceeding is the only proper testimony, and I object to that line of examination, and I move to strike out the testimony of this witness on that subject.

4. On page 7 I object to this question, "How did the balance come to be due to him?" The ground of the objection is that it — improper to show what is a matter of record before the auditor.

5. To the answer to the second question above the bottom of page seven I also object, as it shows that the instructions referred to were in writing, and the writing would be the best evidence.

6. To the question at the bottom of page 11, "What did you write him?" I object on the ground that the letter would be the best evidence, and no notice to produce the original has been served upon the witness or on plaintiff or his counsel. I move to strike out said testimony.

7. On page 11 I object to the reading of the letter referred to, my objection being on the ground that there is no evidence offered as to the handwriting.

8. On page 13 I object to the answer at the top of the page as to what William L. Manson told witness in confidence, it being from client to attorney.

9. I object to the reading of the letter on the ground that the handwriting has not been identified, and I move to strike it out (bottom of page 13 and top of page 14).

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

WASHINGTON, D. C., *January 14th*, 1893—1 o'clock p. m.

Met pursuant to notice as above.

Whereupon, after the stipulation above mentioned was signed and after counsel for complainant noted further objections, the witness, EDWARD D. MCLOUGHLIN, was produced for cross-examination (continued).

112 By Mr. ARMES:

Q. Mr. McLoughlin, you were Mrs. Manson's attorney from 1865, I understand, until her death?

A. From '66 or '67 until her death, as I said in my examination-in-chief.

Q. Were you acquainted with this property on 12th St. that is mentioned in these proceedings?

A. I don't understand what you mean. Do you mean, did I ever see or examine the property?

Q. You have stated that she had property on 12th St.—one or two houses. Do you know whether she had one or two; if so, how many?

A. I don't know whether it was one or two.

Q. Do you know anything about the person from whom she acquired the property on 12th St.; the name of the person?

(Counsel says he didn't ask this question.)

Q. I ask this question: Do you know anything about the person from whom she acquired any interest in the property on 12th St.; the name of the person?

Mr. GARNETT: That is objected to as being immaterial and irrelevant.

A. I do not.

Q. Do you not know, as a matter of fact, that Mrs. Manson was interested in two houses on 12th St.?

Mr. GARNETT: Objected to as being immaterial and also because witness has already answered the question.

A. I do not.

Q. You have stated that you conducted the proceedings before

the auditor in Philadelphia in which William L. Manson, as administrator of Mrs. Manson, his wife, settled his account, in which you say a considerable indebtedness to one Poulson was shown. Did not such indebtedness arise concerning large amounts of property belonging to Mrs. Manson?

Mr. GARNETT: That is objected to as being ambiguous, vague, immaterial, and irrelevant.

A. It arose out of his relations with her as her agent for the collection of rents and from various accommodations made by him to her. As to whether there was a large amount of property I can only say that he had charge of all of her property in Philadelphia, and I don't think it could be considered a large amount of property.

Q. How many pieces of real estate did she own in Philadelphia at the time of her death?

Mr. GARNETT: That is objected to as immaterial and irrelevant

A. My recollection is not very distinct, but as well as I can remember she owned two pieces of property in Philadelphia
113 Co. upon which there were four houses—that is, one on the front of each lot and a small one on the rear.

Q. Was that property sold in administering her estate?

A. All the real estate she had in Philadelphia county and Bucks Co. adjoining was sold under authority of the orphans' court for the purpose of administering her estate.

Q. You have stated substantially that there was a balance due by the estate as shown by the auditor's report of $2,051.26. I would like to know if that balance remained due after the sale of all of Mrs. Manson's real estate in Pennsylvania.

A. It did.

Q. Do you know of the sale of any real estate in Washington in which Mrs. Manson had an interest shortly prior to her death?

A. I heard of such a sale; yes; whether it was shortly prior to her death or not I don't know.

Q. Did you hear of the sale at the time it was made?

A. I did not.

Q. State, as nearly as you can, how long after it was made before you heard of it.

A. I don't know when it was made.

Q. Please state, then, as nearly as you can, when you first did hear of it.

Mr. GARNETT: Objected to as being immaterial and irrelevant.

A. It is impossible for me to do so. I heard Mrs. Manson speak of it in her lifetime.

Q. Do you know whether or not that property was on 12th St.?

Mr. GARNETT: I object to that.

A. I know nothing about it. I had nothing at all to do with it.

Q. Do you know whether or not Mr. Duncanson, the defendant in this case, has since then acquired that property as well as this?

Mr. GARNETT: Objected to as irrelevant.

A. I never heard that until now.

Q. Have you ever heard that Mr. Duncanson has since then obtained to both said pieces of property a quitclaim deed from James W. Barker for the purpose of covering supposed defects in the title?

Mr. GARNETT: Same objection; immaterial and irrelevant.

A. I never heard anything of that whatever.

Q. The original bill in equity No. 3796 you have said is in the handwriting of yourself and Mr. Bell. Please state in whose handwriting pages 1 & 2 is (handing paper).

A. None of it is in my handwriting. Pages 1 & 2 and part of 3 are in the handwriting of Emanuel J. Page, who was a student in my office at the time, with the exceptions — one or two interlineations which are in the handwriting of Mr. Bell. The greater
114 part of page 3 is in the handwriting of Mr. Bell, and the remainder of the bill, the prayers, and affidavit are in the handwriting of Mr. Page, except some interlineations. The figures on top of page 5 are in my handwriting—that is, "$2,051.26."

Q. You dictated the preparation of the bill?

A. No, sir; Mr. Bell prepared the bill.

Q. Were you acquainted with Erastus Poulson, the creditor spoken of?

A. Very well.

Q. At the time of stating that account?

A. Yes, sir.

Q. You have stated that Mrs. Manson had to give up the pawnbroker business because she could not command capital enough to carry it on. Please state now when she gave up the pawnbroker business.

A. As well as I remember, it was two or three years before she died. She wasn't in it very long.

Q. How long was she in it?

A. Not more than two or three months.

Q. Did you close up her business as pawnbroker?

A. No, sir.

Q. In speaking of the distribution of the proceeds of property at the bottom of page- 14 & 15, do you mean that the proceeds of that sale were distributed among the creditors?

A. I mean they were turned over to William L. Manson, the administrator, who was, I believe, the only remaining creditor.

Q. Were you attorney for William L. Manson up to the time of his death?

A. Yes, sir; drew his will and settled up his estate.

Q. After the death of his wife, Sarah, so often referred to, do you know whether he married again?

Mr. GARNETT: That is objected to as immaterial.

A. Yes, sir.

Q. Do you know her name?

A. No, sir.

Q. Do you know whether he had married again at the time he rendered the account above referred to?

Mr. GARNETT: Objected to as immaterial.

A. No, sir; I don't remember. I had no intimacy with him at all, except in a business way.

Q. You say you drew his will and settled up his estate. Do you know who was his executor?

A. His wife was executrix.

Q. Do you know whether her name was Elizabeth?

Mr. GARNETT: I object to all this as immaterial.

A. I think her name was Elizabeth.

Q. Were you the sole counsel of Elizabeth Manson in settling her estate?

115 Mr. GARNETT: Same objection.

A. Yes, sir; I represented her until she left Philadelphia.

Q. Why was the bill in equity, No. 3796, referred to filed to sell property in Washington?

Mr. GARNETT: Objected to as immaterial and irrelevant, because witness has already testified for the purpose of raising money to pay the debts.

A. For the reason stated in the bill.

Q. Why was not the estate in Pennsylvania first exhausted?

Mr. GARNETT: Objected to. The witness has testified in examination-in-chief and cross-examination that the real estate was exhausted, and there was a deficit of over $2,000.

A. It was all exhausted first.

Q. Are you familiar with all the details of the account and report of the auditor handed you and above referred to?

Mr. GARNETT: Objected to as immaterial and irrelevant.

A. I was perfectly familiar with it all.

Q. You stated in your direct examination that you wrote to Frederick L. Manson about the sale of the 12th St. property, but could not find your copy of the letter. Did you write to Mr. Manson or to Capt. Joseph Rendlebrook?

A. I wrote to Manson, and may have written to the captain also; I don't remember.

Q. If in fact you wrote to Manson why did you write to Rendlebrook?

Mr. GARNETT: Objected to for the reason that witness does not say he wrote to Rendlebrook. He possibly may have done so.

A. If I wrote to Rendlebrook it was done as an extra precaution.

Q. Did you not in fact write under date of Nov. 3, 1874, to Capt. Joseph Rendlebrook, at Fort Clark, Texas?

Mr. GARNETT: Objected to, as the witness has twice stated that he didn't know whether he wrote to the captain or not.

A. I don't remember.

Q. For the purpose of refreshing your recollection I will read to you a part of one of the exhibits filed as follows:

Mr. GARNETT: Objected to unless the particular exhibit is designated.

"Being informed by my captain that he received a letter regarding some property which I was heir to," &c. Now can you state, if you did not write the captain, what you said to him?

Mr. GARNETT: I object to that for the reason that the improper way of reading an extract from a paper is not admissible, and there had not been anything read from the letter which would in-
116 dicate that he wrote the captain and witness has repeatedly stated that he didn't know whether he wrote to the captain or not.

A. I do not remember writing the captain; that letter, I think, was from Mr. Bell.

Q. Have you examined your letter books to ascertain whether you wrote to Capt. Rendlebrook?

A. No, sir.

Q. Referring to the letters filed as exhibits and produced by you, where have they been kept?

A. Among the papers of Manson's estate, in my office.

Q. How recently before your first examination in this case were they seen by the defendant's counsel?

Mr. GARNETT: Objected to for the reason that the witness has not testified that they were seen by the defendant's counsel at all before that examination. The question involves that supposition.

A. On the day of my examination.

Q. Had you previous to that informed him that you had those letters?

A. Yes, sir.

Q. When?

A. Three or four days before.

Q. Not earlier than that?

A. No, sor.

Q. You have had charge of all the papers in the Manson case?

A. Yes, sir; the Philadelphia papers.

Q. I hand you the report of the auditor in question and ask you if you recognize that as the final report settling the estate of Mrs. Manson.

A. It is a certified copy of it.

Q. Where was that report filed and when?

Mr. GARNETT: Objected to as immaterial, and the report speaks for itself.

A. It was filed in the orphans' court for the city and county

of Philadelphia, and it appears to have been filed on July 18th, 1873.

Q. That would be the July term, would it not?

A. No; it would be filed as of the same term as the original account.

Q. Was there any other account concerning Sarah Manson's estate with which you were concerned or had knowledge in which that precise sum of $2,051.26 was adjudged to be due to William L. Manson or to his estate?

Mr. GARNETT: Objected to as irrelevant and immaterial.

A. There was no other account filed that I know of.

Q. Are you the only Edward D. McLoughlin practicing law in Philadelphia?

A. I am.

Q. And the only one who has practiced there since 1865?

A. The only one.

117 Q. Did you file a petition for Elizabeth G. Manson, administratrix *d. b. n., c. t. a.*, of the estate of Sarah Jane Manson, deceased, in the orphans' court for the city and county of Philadelphia in June, 1886, to sell real estate of said Sarah to satisfy a claim of the estate of said William L. Manson?

Mr. GARNETT: Objected to as immaterial and irrelevant.

A. I think I did.

Q. Was the property sold pursuant to that petition?

A. No, sir.

Q. (Paper handed witness purporting to be a copy of said petition.) Is that a copy of said petition?

A. I don't know whether it is a copy or not. I remember I did file a petition of that nature.

Q. Do you recognize that as a substantial copy of the petition?

A. I think it is. I don't remember.

Q. After looking at the petition, do you remember was the property sold?

A. It was not. It was sold for taxes, and the record will show the orphans' court sale was not consummated. This petition gives term and number of auditor's report. This property was not known of until after the death of William L. Manson by me, and then his second wife came to me——

Mr. ARMES: I object to any further statement, as my question has been fully answered.

—and upon her representations I filed this petition. I got an order of sale and the property was knocked down to a purchaser, who refused to take it afterwards on account of some flaw in the title, and it was subsequently sold for taxes. I don't know what it was knocked down for.

Q. Did you write the petition?

A. I drafted the petition.

Mr. ARMES: I will ask that the petition referred to and just handed witness be marked Exhibit C. H. A. 1.

Redirect examination.

By Mr. G.:

Q. Page 3 of your deposition you speak of knowing what Mrs. Manson's business was; that was objected to as a communication between counsel and client; you state, I can only tell that—referring to her occupation in Washington—from her own statement to me. Now, did Mrs. Manson at any time inform you as a client that she kept a house of prostitution in Washington?

A. No, sir.

Q. How did you learn those facts?

Mr. ARMES: Objected to as wholly immaterial.

A. From Mr. Brewster, William L. Manson, & others.

Mr. ARMES: I move to strike out the answer.

118 Q. Page 13 of the deposition, questions and answers have been objected to on the ground that what William L. Manson told you, that none of the children were his, was communicated to you as a client to an attorney. I will ask you whether Mr. Manson ever made such a communication to you in the capacity of a client.

A. No, sir.

Q. In the petition shown you of Elizabeth Manson it is stated that over $2,000 was due William L. Manson as a creditor of Sarah. Did you know at that time, in point of fact, as to how much or whether any portion of that indebtedness had been paid over by the administrator of Sarah Manson out of the proceeds of the sale of the 12th St. property in Washington?

A. The settlement was made between Bell and Manson, and Manson always told me he got nothing out of it, and that was his reason for not paying me my fee.

Q. What was the value of this piece of real estate which the petition of Elizabeth Manson, administratrix, was filed to sell as a part of the estate of Sarah Manson, and which was discovered after the death of William, as you have stated?

A. It was practically valueless and very far out and covered with taxes; no taxes had been paid for 20 years, to the best of my recollection; it was a vacant lot.

Q. You were asked about these letters from Frederick L. Manson. Did you receive them by due course of mail?

A. The one I received came by due course of mail and the other came through Mr. Bell. He told me he received it from Fort Clark.

Q. Did you see Frederick L. Manson at any time after the receipt of that letter?

A. No, sir.

Q. William L. Manson, his reputed father, is dead.

A. Yes, sir.

Q. Did you show him the letter you received?
A. I have no distinct recollection about that.

Recross-examination.

By Mr. ARMES:

Q. The Mr. Bell you have mentioned was W. P. Bell, of this city, was he not?
A. W. Pierce Bell, a member of the bar of this city.
Q. Do you remember when or where you last saw Mr. Bell?
A. I do not.
Q. Did you ever see him in Philadelphia?
A. Oh, yes; several times.
Q. Concerning the equity cause 3796?
A. I think so.
Q. Did you see him in Philadelphia after the property here was sold?
A. I don't think I have ever seen him since the property was sold.
119 Q. If, then, he was in Philadelphia, after the property was sold, do you say he didn't call on you?

Mr. GARNETT: I object to that.

A. I don't know whether he was in Philadelphia or not after the property was sold. There was a little feeling between Bell & myself about the settlement of the matter.
Q. You will observe that the auditor in the report mentioned refers to an exhibit connected with said report, which he calls "Exhibit E." When did you last see that exhibit?

Mr. GARNETT: Objected to as not being responsive to anything asked on redirect examination.

A. What is "Exhibit E"? I don't remember anything about it. I don't think I have ever seen it since the account was settled. I have no recollection of seeing it.
Q. Having looked at the report of the auditor referring to it, do you remember now what it was?
A. I don't remember anything about it—that is, any of the details.
Q. Do you remember the substance of it?

Mr. GARNETT: Objected to; same grounds.

A. I remember there was an account stated between Poulson and Burmeister and Mrs. Manson's estate, because I helped to state it.

EDW. D. McLOUGHLIN.

Subscribed and sworn to before me this 14th day of January, 1893.
JOHN A. SWEENEY,
Examiner in Chancery.

FORT CLARK, TEXAS, *Nov.* 12*th*, 1874.

Mr. Edw. McLoughlin.

DEAR SIR: It becomes necessary for me to inform you in accordance with your epistle of Nov. 3rd that I require no guardian as I am not a minor but 22 years of age last Oct. so whatever might be done in the matter as far as I am concerned I will have no representative but myself. If it becomes necessary to dispose of said property, inform me about what it will bring, *I* what my share " if I receive any " will be, and I will answer you immediately. I hope you are enjoying good health. My captain informed — that he received a — regarding some property but never informed me of its contents. Hoping to hear from you soon I —,

Respectfully, FRED. L. MANSON,
Co. G, 4th U. S. Cav.

Exhibit E. McL. No. 1. John A. Sweeney, examiner in chancery.

120 This was written in lead pencil on the back of above letter:

DR. BELL: I rec'd above this a. m. return it with information asked for if you can. I suppose his answer had better be sent to him direct.

Hope you are well.

E. D. McLOUGHLIN.

21 Nov., '74.

This was written in lead pencil on back of letter:

DEAR MC.: Is this young soldier trying to play smart? I do not propose to heed his statement about his age in the place of the sworn statement of compl't though I would inform him, if I were you, as I did, that the property is worth from $2,000 to $3,000 perhaps not so much, that its value will be realized by sale under decree of ct. & his interest, as heir, will be fully protected. If his captain returns his answer. I shall of course not ask a decree for sale until I have assured this absent def't will be satisfied, & that he is an infant, or until at least I am satisfied a sale will be for his advantage. I wrote him that taxes would eat up the property. You rec'd mine I presume this a. m.

Y'rs, W. P. BELL.

11, 23, '74.

FORT CLARK, TEXAS, *Nov.* 12, 1874.

Mr. Wm. Pierce Bell.

DEAR SIR: Being informed by my captain that he received a letter regarding some property which I was an heir to, and on receiving a letter from Mr. McLoughlin, 706 Walnut St., Phila., I write informing you that I am not a minor, but 22 years of age, and anything regarding such property will be, so far as I am concerned, acted upon by my authority, as I have no other representative, anything — the above will be answered by me immediately. McL

states that he wants to sell the property, if so, let me know for what price, and what my share will be, if any.

With my kind regards, I am, respectfully,

F. L. MANSON,
Co. G., 4th U. S. Cav.

Exhibit E. McL. No. 2. John A. Sweeney, examiner in chancery.

DISTRICT OF COLUMBIA, *ss:*

I, John A. Sweeney, an examiner in chancery, do hereby certify that in pursuance of notice I proceeded to take the testimony of Edward D. McLoughlin on behalf of defendant in this case at the time and place mentioned in the caption thereof; that the counsel for complainant and defendant entered into the stipulation hereinbefore referred to and annexed hereto; that in pursuance of same witness read over his testimony given on the 10th day of No-
121 vember, 1892, and resigned and reswore to the same; that counsel for complainant noted further objections to said testimony, and that thereupon the further redirect and recross-examination by the respective counsel was proceeded with, being taken down by me in writing from the oral statements of the witness, and after it had been read over by me to said witness was subscribed and sworn to by him in my presence, the witness having been first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties to said cause or in any manner interested therein.

JOHN A. SWEENEY,
Examiner in Chancery.

Petition for Order on Examiner.

Filed Jan. 21, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON *vs.* CHARLES C. DUNCANSON. } In Equity. No. 14017.

To the honorable justice holding an equity court:

The petition of the above-named plaintiff respectfully shows that he is the plaintiff in the above-entitled cause.

That on the 14th day of January, 1893, the defendant in said cause took testimony in — behalf at the office of his solicitor, H. W. Garnett, Esq., and then and there examined as a witness one Edward D. McLoughlin before John A. Sewwney, Esq., an examiner in chancery of this honorable court.

That the testimony of said witness tended to show that he was legal adviser of the complainant's mother, Sarah M. J. Manson, in her lifetime and for some time prior to her death, which occurred

in the year 1870, and legal adviser of her husband, William L. Manson, who administered upon her estate and whose administration account exhibited a claim that said estate was indebted to him, said William L. Manson, in the sum of $2,051.26. Said witness also testified that he, said witness, and one W. P. Bell, of Washington, D. C., took part in the preparation of a creditor's bill, under which, in the year 1875, there was sold in the District of Columbia for the sum of $2,500, to satisfy said claim, the real estate described in the above-entitled cause, and that said proceeds of sale were paid to said claimant.

Your petitioner further avers that on the cross-examination of said witness your petitioner's solicitor produced as an exhibit a paper-writing purporting to be a copy of a certain petition for the sale of real estate in the city of Philadelphia as a part of the estate of said decedent, Sarah Manson, to pay the identiacl debt aforesaid of $2,051.26 long after the sale in 1875, said petition being in the name of Elizabeth G. Manson, administratrix *d. b. n. c. t. a.*, etc.

122 That said paper-writing was handed to said witness for examination, and he testified concerning the same as follows:

"Q. Did you file a petition for Elizabeth G. Manson, administratrix *d. b. n. c. t. a.* of the estate of Sarah Jane Manson, deceased, in the orphans' court for the city and county of Philadelphia, in June, 1886, to sell real estate of said Sarah to satisfy a claim of the estate of said William L. Manson?

"Mr. GARNETT: Objected to as immaterial and irrelevant.

"A. I think I did. * * *

"Q. (Paper handed witness purporting to be a copy of said petition.) Is that a copy of said petition?

"A. I don't know whether it is a copy or not. I remember I did file a petition of that nature.

"Q. Do you recognize that as a substantial copy of the petition?

"A. I think it is. I don't remember. * * *

"Q. Did you write the petition?

"A. I drafted the petition.

"Mr. ARMES: I will ask that the petition referred to and just handed witness be marked 'Exhibit C. H. A., 1.'

"Redirect examination by Mr. G.: * * *

"Q. In the petition shown you of Elizabeth Manson it is stated that over $2,000 was due William L. Manson as a creditor of Sarah. Did you know at that time, in point of fact, as to how much or whether any portion of that indebtedness had been paid over by the administrator of Sarah Manson out of the proceeds of the sale of the 12th St. property in Washington?

"A. The settlement was made between Bell and Manson, and Manson always told me he got nothing out of it, and that was his reason for not paying me my fee."

All of which will fully appear by reference to the deposition of said witness as filed in this cause by said examiner.

Your petitioner further says that said paper-writing was marked "Exhibit C. H. A., 1," by said examiner, pursuant to above request, and was thereby made an exhibit in said cause and became a part of the testimony of said witness and was a part of said deposition, and as such was used by the defendant in a redirect examination of said witness, as above set forth.

And your petitioner further avers that said exhibit was retained by said examiner, and said examiner has informed your petitioner's solicitor, C. H. Armes, that he made said exhibit a part of said deposition, but subsequently, at the request of the defendant's said solicitor, withdrew the same from said deposition; and upon said information the plaintiff avers that such was the fact; and your petitioner avers that said deposition has been filed in this cause without said exhibit, and that said examiner withholds the same therefrom.

Your petitioner therefore prays that an order be made by this honorable court requiring said examiner to bring said exhibit
123 into court, and that the same may be filed with the deposition aforesaid and made a part thereof, and that such further or other order and relief in the premises may be granted as the exigencies of the case may require.

FREDERICK L. MANSON,
By C. H. ARMES, *His Solicitor.*

Charles H. Armes, being duly sworn, says he is the solicitor of the plaintiff in the above-entitled cause; that he has read the above petition, and that the averments contained therein are true, and the facts stated upon information and belief he believes to be true.

C. H. ARMES.

Sworn to before me Jan'y 21, 1893.

J. R. YOUNG, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

Order of Court and "Exhibit C. H. A., I."

Filed Jan. 21, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

Upon the petition of plaintiff in the above-entitled cause, this day filed, it appearing to the court upon an examination of the deposition of Edward D. McLoughlin, filed in this cause, that the certain "Exhibit C. H. A., 1," mentioned in said petition and deposition, was the paper referred to in the testimony of said witness, it is this 21st day of January, 1893, ordered that the plaintiff or his solicitor may obtain said exhibit from the examiner who took said deposi-

tion and may file the same as such exhibit in said cause, and the same being produced in court is hereto annexed.

A. C. BRADLEY, *Justice.*

EXHIBIT C. H. A. No. 1. John A. Sweeney, Examiner in Chancery.

Filed Jan. 21, 1893.

In the Matter of the Estate of SARAH JANE MANSON, Dec'd.

To the honorable the judges of the orphans' court for the city and county of Philadelphia:

The petition of Elizabeth G. Manson, administratrix *d. b. n. c. t. a.* of the estate of Sarah Jane Manson, deceased, respectfully represents that there is no personal estate of said decedent to the knowledge of petitioner, the same having been fully administered by the administrator *c. t. a.* of said decedent; that said decedent died seized in fee of and in all that certain lot or piece of ground
124 situate on the north side of Maple St. at the distance of 60 ft. eastward from the east side of 62nd St., in the 24th ward of the city of Philadelphia, containing in front or breadth on the said Maple St. 40 ft. and extending in length or depth of that width at right angles with Maple St. 112 ft. 6 in., bounded on the north by lots granted to M. Hoopes, on the east by lots granted to A. Black, on the west by ground now or late of Thomas F. Butcher, and on the south by Maple St. aforesaid.

And that your petitioner has no knowledge of any other real estate belonging to the estete of said decedent; that the estate of said decedent is indebted to the estate of Wm. L. Manson, dec'd, in the sum of $2,051.26, as appears from the adjudication upon the account of your petitioner's predecessor in this trust, filed to July T., 1873, No. 152, and there are no other debts of said decedent so far as your petitioner knows.

Your petitioner therefore prays for an order authorizing her to make sale of the premises above described for the purpose of paying the debts of decedent.

And she will ever pray, &c.

ELIZABETH G. MANSON.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Elizabeth G. Manson, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are just and true to the best of her knowledge and belief, and that the statements as to the personalty and debts of said decedent therein contained are just and true.

ELIZABETH G. MANSON.

Sworn and subscribed before me this 16th day of June, 1886.

F. T. CLARK,
Notary Public.

Motion Requiring Plaintiff to Give Security for Costs and Notice Thereof to Sol'r for Pl'ff.

Filed Feb. 15, 1893.

In the Supreme Court of District of Columbia, Holding a Special Term. In Equity.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

Now comes the defendant, by his counsel, and moves the court that *be* plaintiff be required to give security for costs in the above-entitled cause, he being a non-resident and insolvent, and the defendant having no means of recovering his costs against the plaintiff in the event of success on his part.

HENRY WISE GARNETT,
Sol'r for Defendant.

125 Charles H. Armes, Esq., sol'r for plaintiff.

SIR: Take notice that the above motion will be called up before the court on Wednesday next, the fifteenth (15th) day of February, A. D. 1893, at ten (10) o'clock a. m., or so soon thereafter as counsel can be heard.

HENRY WISE GARNETT,
Sol'r for Defendant.

Service and copy acknowledged this — day of ——, A. D. 1893.

——— ———,
Sol'r for Plaintiff.

Endorsed.

DISTRICT OF COLUMBIA, *ss:*

I, Harvey S. W. De Gaw, being first duly sworn, do on oath depose and say that I served a copy of within motion and notice upon Chas. H. Armes, sol'r for plaintiff, by leaving a copy thereof with him on the 13th day of Feb'y, 1893, at his office, in the city hall, at one o'clock p. m.

HARVEY S. W. DE GAW.

Subscribed and sworn to before me Feb. 13, 1893.

J. R. YOUNG, *Clerk,*
By W. E. WILLIAMS, *Ass't Clerk.*

Order Overruling Defendant's Second Motion for Security for Costs.

Filed Feb. 15, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } Eq. 14017.

It is this 15th day of February, 1893, ordered that the defendant's motion for security for costs this day submitted to the court be, and the same is hereby, overruled.

A. B. HAGNER.

Motion to Extend Time for Taking Testimony on Behalf of Defendant and Notice Thereof to Sol'r for Pl'ff.

Filed Feb. 15, 1893.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

Now comes the defendant, by his counsel, and moves the court to extend the time in which he can take his testimony in this
126 case and for cause shows that he has been unable to until recently to obtain the residence of an important witness, who is a non-resident of this District, and that it is necessary for him in the proper defense of this case to have the said deposition of said witness, and he needs time to obtain the name of a commissioner to take the deposition of the said witness and also to take the deposition of witnesses in this District.

HENRY WISE GARLETT,
Sol'r for Defendant.

Charles H. Armes, Esq., sol'r for plaintiff.

SIR: Take notice that the above motion will be called up before the court, on Wednesday next, the fifteenth (15th) day of February, A. D. 1893, at ten (10) o'clock a. m., or so soon thereafter as counsel can be heard.

HENRY WISE GARNETT,
Sol'r for Defendant.

Service and copy acknowledged this — day of ——, A. D. 1893.

——— ———,
Sol'r for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

I, Harvey S. W. De Gaw, being first duly sworn, do on oath depose & say that I served a copy of within motion and notice upon

Charles H. Armes, sol'r for plaintiff, by leaving a copy thereof with him on the 13th day of Feb'y, 1893, at his office, in the city hall, at one o'clock p. m.

HARVEY S. W. DE GAW.

Subscribed and sworn to before me Feb. 13, 1893.

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

Order Extending Def't's Time to Take Testimony.

Filed Feb. 15, 1893.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } No. 14017.

Upon motion of the solicitor for the defendant, it is this 15th day of February, A. D. 1893, ordered that the time for the defendant to take his testimony be, and hereby is, extended twenty days.

A. B. HAGNER.

127 *Motion to Extend Time for Taking Testimony on Behalf of Defendant and Motion to Appoint Rowland Evans to Take Testimony Orally.*

Filed Mar. 11, 1893.

In the Supreme Court of the District of Columbia, the 6th Day of March, 1893.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON } No. 14017. Equity.

And now comes the defendant, by his solicitor, and moves the court to extend the time of the defendant for taking testimony, and further moves the court to appoint Rowland Evans, Fletcher's Bank building, Indianapolis, Indiana, examiner to take the testimony of Patrick Downey, of said city, a material witness for the defendant, and that a commission be ordered to issue to said Evans, and that said testimony be taken orally.

HENRY WISE GARNETT,
Sol'r for Def't.

To Charles H. Armes, Esq., sol'r for pl'ft:

Take notice that the above motions will be made to the court on Wednesday, March 8th, 1893, at 10 o'clock a. m., or so soon thereafter as counsel can be heard.

HENRY WISE GARNETT,
Sol'r for Def't.

Mar. 6, 1893.

Service accepted.

C. H. ARMES.
Sol'r for Plaintiff.

Motion to Extend Time for Taking Testimony on Behalf of Defendant and Motion to Appoint Rowland Evans to Take Testimony Orally.

Filed Mar. 11, 1893.

In the Supreme Court of the District of Columbia, the 9th Day of March, 1893.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } No. 14017. Equity.

And now comes the defendant, by his solicitor, and moves the court to extend the time of the defendant for taking testimony, and further moves the court to appoint Rowland Evans, Fletcher's Bank building, Indianapolis, Indiana, examiner to take the testimony of Patrick Downey, of said city, a material witness for the de-
128 fendant, and that a commission be ordered to issue to said Evans, and that said testimony be taken orally.

HENRY WISE GARNETT,
Sol'r for Def't

To Charles H. Armes, Esq., sol'r for pl'ft:

Take notice that the above motion will be made to the court on Saturday, March 11th, 1893, at 10 o'clock a. m., or so soon thereafter as counsel can be heard.

HENRY WISE GARNETT,
Sol'r for Def't.

Service accepted Mar. 9th, 1893.

C. H. ARMES,
Att'y for Plaintiff.

Order Limiting Time to Take Testimony.

Filed Apr. 12, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

The motion of the defendant, filed the 11th day of March, 1893, to appoint an examiner to take the testimony of one Patrick Downey and to extend the defendant's time to take testimony coming on to be heard, and it appearing to the court that counsel for the respective parties have stipulated in writing as to the testimony of said witness, it is, this 12th day of April, 1893, ordered that said

motion to appoint an examiner be overruled, and that the defendant's time to take testimony be extended until the 20th day of April, 1893, and the plaintiff shall have until the 25th day of April, 1893, to take his testimony in reply.

A. B. HAGNER.

Depositions and Exhibits.

Filed Apr. 25, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017, Doc. 34.

DISTRICT OF COLUMBIA, *ss:*

Caption.

Be it known that at an examination of 2 witnesses, begun and held on the 24th day of April, A. D. 1893, when the depositions hereto attached were taken, I, Richard L. Wallach, an examiner in chancery, did cause to be personally present at the office of
129 myself, in the city of Washington, in said District, John Foley & John A. Sweeney to testify on the part and behalf of the complainant in a certain cause now pending in the supreme court of the District of Columbia, wherein Frederick L. Manson is complainant and Charles C. Duncanson is defendant.

Certificate.

DISTRICT OF COLUMBIA, *ss:*

I, Richard L. Wallach, examiner in chancery, do hereby certify that, in pursuance to the annexed notice & request of complainant's solicitor, the depositions here attached were taken down by me and reduced to writing in the presence of and from the oral statements of the witnesses at the time and place designated in the caption above, and after they had been reduced to writing they were then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of counsel for the parties respectively within noted, who were then and there attending; the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

RICHARD L. WALLACH,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } Eq. 14017, Doc. 34.

Henry Wise Garnett, Esq., sol'r for defendant:

Please take notice that, at the request of complainant's solicitor, I shall proceed to take testimony on the part of the complainant in above-entitled cause on Monday, Ap'l 24th, 1893, at 3 o'clock p. m., at my office, room 22 Fendall bldg., where you can attend or not, as you may see fit.

Ap'l 21, 1893.

RICHARD L. WALLACH,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } Eq. 14017, Doc. 34.

MONDAY, *Ap'l* 24, 1893.

Met pursuant to request of complainant's solicitor and notice to defendant's solicitor, to take additional testimony on the part of the complainant in above-entitled cause.

130 (Present: Mr. Charles H. Armes, for complainant, and Mr. Henry Wise Garnett, for defendant.)

Whereupon JOHN FOLEY, a resident of the District of Columbia, a witness of lawful age, produced, sworn, & examined on the part of the complainant, deposes & says as follows:

Q. Were you during the year 1874 a private citizen or in the military service of the Government?

A. In the military service; a sergeant of troop G, 4th U. S. cavalry.

Q. Who was the captain of your company?

A. Joseph Rendlebrook.

Q. Did you know one Frederick L. Manson in that company?

A. Yes, sir.

Q. Did you know one Patrick Donnery?

A. Yes, sir.

Q. Did you know one Samuel J. Levi?

A. Yes, sir.

Q. What position did Donnery occupy in November & December, 1874?

A. First sergeant, sir.

Q. Did you ever see Donnery write?

A. Yes, sir; I have seen his name in the company muster-roll.

Q. Did you ever see Captain Rendlebrook write?

A. Yes, sir.

Q. Look at the paper I hand you, entitled Wm. L. Manson *vs.* Erastus Poulson *et al.*, in equity, No. 3796, & marked on the back answer of Frederick L. Manson, infant, one of the papers of record in said cause No. 3796, in the supreme court of this District, and state whether you are acquainted with the signatures on pages 2 & 3 which purport to be the signatures of commissioners.

(Objected to on the ground that the witness has not shown sufficient knowledge to testify on this subject, &, further, that said commission cannot be attacked in this proceeding & in this manner.)

Q. Are you acquainted with the signature of said Patrick Donnery?

(Objected to, as the witness has already testified on this point that all the knowledge he had was from seeing his name on the muster-roll.)

A. Yes, sir.

Q. State whether or not those are his genuine signatures appended opposite the word commissioners.

(Same objection as to question before the last one.)

A. Yes, sir.

Q. You say you have seen his name on the company muster-rolls. My inquiry was did you ever see Donnery write?

A. I have seen him write.

131 Q. State whether or not you are familiar with his handwriting.

A. Yes, sir; for going on the company sick report the first sergeant always has to sign his name, & that is how I became familiar with his signature.

Q. State whether or not there was a man named Donnery also in that company.

A. Yes, sir.

Q. Do you know his full name?

A. William F. Donney.

(The whole of this deposition is objected to by Mr. Garnett as being immaterial, irrelevant, & inadmissible on the issues involved in this cause, and, reserving said objections & exceptions, the following cross-examination is made:)

Cross-examination:

Q. What was Donnery's first name?

A. Patrick Donnery.

Q. In December, 1874, who was company clerk, or was not S. R. Levi company clerk at that time?

A. Yes, sir.

Q. Did you know a man named Benjamin Evans at that time?

A. Yes, sir.

Q. Was he a member of the troop?

A. Yes, sir.

Q. I understood you to say that Donney's name was William F.

A. It was, to the best of my knowledge.

A. Are you satisfied that in December, 1874, Donney still was a member of that troop?

A. My memory fails me on that date.

Q. The muster-rolls on file at the War Department would show whether he was a member of the company at that time, would they not?

A. Yes, sir. The War Department is the best evidence on that point.

Q. I understand you now that you can't be positive whether Donney was a member of the troop in December, 1874, do I not?

A. Yes, sir.

Q. Can you be positive whether he was a member in November, 1874?

A. No, sir; I cannot.

Q. When did you leave the troop?

A. On the 3rd of August, 1879, at Fort Reno.

Q. Has your attention ever been called to this matter since then?

A. No, sir.

Q. You never had occasion to think it over, I suppose?

A. No, sir; I never has any occasion.

Q. Did you talk it over with anybody before you testified today?

A. No, sir.

132 Q. Did you see this commission that you have testified about today?

A. No, sir; I haven't seen this.

Q. It was the first time you saw this paper when it was handed to you in this room today?

A. Yes, sir; this is the first time.

Q. Then I understand you that you had no conversation with any one about the matters you have testified to until you were asked about them on the stand today?

A. No, sir.

Q. How did you happen to come today?

A. I drove in from the "Home" today with the deputy governor's carriage, which I am driving.

Q. How did you know that you were wanted in this case?

A. I was notified by telephone by Mr. Armes, assistant District attorney.

Q. Is that the first you heard about the case?

A. Once before this Mr. Armes, the assistant District attorney, was not ready.

Q. How did you first learn that you would be wanted in this case?

A. I knew that I had to report to the District attorney's office, but I had no knowledge of it.

Q. Who told you to report to the District attorney's office?

A. The deputy governor, sir—Captain D. A. Irwin.

Q. Did he have any talk with you about this matter when he told you to report?

A. No, sir; none whatever.

Q. When was it he told you the first time to report?

A. I do not remember the date of the first time, but today it was 9 o'clock in the forenoon.

Q. When did you first see Mr. Armes?

A. I believe it was in the month of February.

Q. Where did you see him?

A. At the District attorney's office.

Q. How did you come to go there?

A. I was notified by telephone by Mr. Armes, assistant District attorney.

Q. You have several times spoken of Mr. Armes as assistant District attorney. Were you notified to report to him as assistant District attorney?

A. Yes, sir; by Captain D. A. Irwin.

Q. When you first got this notice from Mr. Armes by telephone, was that after Captain Irwin had first told you to call at his office?

A. No, sir; it was after the telephone message came that Captain Irwin notified me.

Q. Did Mr. Armes tell you what he wanted to see you about?

A. No, sir; he just requested that I should report to the District attorney's office at such a time that afternoon.

Q. Did you go there?

A. Yes, sir.

133 Q. Did you see him?

A. Yes, sir.

Q. Have a talk about this case?

A. Yes, sir; he asked me if I could identify the handwriting of certain members of the troop, and I said I could.

Q. Did he show you any paper at that time?

A. Nothing more than a slip of paper with these three signatures on.

Q. Did you identify the signatures?

A. Yes, sir.

Q. Wasn't that the same paper that was shown you this evening?

A. I can't say positively, as I did not have my glasses on at the time.

Q. Look at this paper & see if it is not the same paper that was shown you by Mr. Armes, assistant District attorney, and those the same signatures?

A. I could not say positively; the signatures I have no doubt about, but I cannot say whether this is the same paper.

Q. Did Mr. Armes tell you at that time, or at the time he telephoned for you to come there, that he was the assistant District attorney?

A. No, sir; Captain Irwin told me that the assistant District attorney, Mr. Armes, wanted to see me, and that was the only knowledge I had that he was assistant District attorney.

Q. I understand you to say that when you were telephoned for first you were told to come to the District attorney's office; who were you told to ask for there?

A. Mr. Armes, the District attorney.

Q. Did Mr. Armes tell you that by telephone?

A. No, sir; I heard it from Captain Irwin; the telephone came to him.

Q. You told me just now, Mr. Foley, that before Captain Irwin ever spoke to you you got a telephone message from Mr. Armes to come to the District attorney's office; is that correct?

A. No, sir; that is a mistake.

Q. Then, do you mean to say that the first you heard of coming to the District attorney's office was from Captain Irwin, and he told you what you said just now?

A. Yes, sir.

Redirect:

D. Do you know whether Mr. Donney was honorably discharged or died while he was a member of the company, do you remember?

(Objected to as immaterial.)

A. To the best of my knowledge he died from injuries received at Fort Concho. I don't remember when he died.

JOHN FOLEY.

134 Sworn and subscribed to before me this 24th day of April, A. D. 1893.

RICHARD L. WALLACH,
Examiner in Chancery.

Mr. Armes here offers in evidence transcript of a record from the War Department & marked Exhibit "R. L. W. No. 1."

JOHN A. SWEENEY, a resident of the District of Columbia, a witness of lawful age produced, sworn, & examined on the part of the complainant, deposes and says as follows:

Q. You took the testimony of one Edward McLoughlin as a witness for the defendant in this case, I believe?

A. Yes, sir.

Q. The first deposition you took to him in Philadelphia for his signature; is that so?

A. Yes, sir.

Q. In that deposition he made a change of the original by running his pen through the word "divided" & writing over it the word "distributed." Is that correct?

(Mr. Garnett objects to anything as to any deposition in this case, as it speaks for itself, and, further, that the witness McLoughlin was brought back and examined & cross-examined about the testimony that he had given and about this very deposition.)

A. Yes, sir.

Q. I refer to that portion of the deposition in which the witness deposed substantially that the proceeds of the sale in Washington were "distributed;" when he made that alteration did he say anything; and, if so, what?

(Objected to for the same reasons and for the further reason that if it is to be used in any way to contradict or vary the statements of the witness McLoughlin his attention should have been called to it when he was on the stand, and it is inadmissable at this stage of the case.)

A. I called his attention to that word "divided" and to the fact of a dispute among counsel as to the import of that word, and he said in effect that the money had been distributed among the creditors or paid to the creditor or creditors.

—. Did he say anything about ther heirs getting any if it?

(Objected to as leading & same objection as above.)

A. I don't remember whether he said that or not. My impression is that the creditors got the money.

(Witness'es impressions objected to, or that he said that the creditors got the money.)

(Answer objected to as inadmissable.)

135 Q. Do you remember what you told me on your return from Philadelphia that said witness said?

(Objected to as clearly immaterial & improper.)

A. I don't remember exactly the conversation.

Q. Now, to refresh your recollection I will ask you if he did not say that the heirs got none of that money.

(Objected to by Mr. Garnett, who asks that the examiner certify this matter to court to determine whether this — a proper manner of examination, and he suggests to the witness that he does not need to answer this question, & same objection as to the question as before.)

A. I will answer the question. I don't remember exactly what I said. What he said was that in effect, but what Mr. McLoughlin said was that the creditors got the money.

Q. To whom did you report Mr. McLoughlin's statement to the effect that the heirs got none of this money, if you reported it to any one?

(Same objection, &, further, that the witness having given what Mr. McLoughlin said, the effect of what he said, the counsel has lugged into this question, is a matter for the court and is claerly inadmissible either in question or in answer, and in addition to this the same objection is made as has been made to all the previous ones.)

A. I don't remember reporting that exact statement to any one. He may have said it & I may have reported it at the time both to Mr. Garnett and to Mr. Armes. I did report it to both those gentle-

men on my return from Philadelphia, what Mr. McLoughlin said, and that was that the creditors got the money, and my conclusion from that was that the heirs did not get any and I may have said that at the time.

(Answer objected to, and especially as to the witness'es conclusions and to any statement as to what he may have said.)

Q. Now, Mr. Sweeney, since your mind has been directed thus far in this examination to that interesting visit of yours to Philadelphia, do you not recollect that Mr. McLoughlin said, in terms, that the heirs got none of that money?

(Same objection, and, further, that this same question has been asked at least 3 times already.)

A. I think I remember in my questions to him about the word. I asked him whether the heirs got the money or the creditors, and his answer was as I gave it above, that the creditors got the money.

(Answer objected to, and notice is given by Mr. Garnett that he will move to strike out the whole of this deposition.)

JOHN A. SWEENEY.

136 Sworn and subscribed to before me this 24th day of April, A. D. 1893.

RICHARD L. WALLACH,
Examiner in Chancery.

Mr. Armes here offers in evidence the transcript of the record of the orphans' court of the city and county of Philadelphia, and marked "Exhibit R. L. W. No. 2."

(Objected to as immaterial and inadmissable.)

EXHIBIT R. L. W. No. 1.

Filed Apr. 25, 1893.

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
WASHINGTON CITY, *January* 27, 1893.

Pursuant to section 882 of the Revised Statutes I hereby certify that it appears from the records of the adjutant general's office that the annex- is a true transcript from muster-roll of Company "G," Fourth cavalry, U. S. Army, covering the period from Oct. 31, to Dec. 31, 1874, and a true tracing from enlistment papers of Patrick Donnery and Wm. F. Downey, filed therein.

R. WILLIAMS,
Adjutant General.

Be it known that R. Williams, who signed the foregoing certificate, is the adjutant general U. S. Army, and that to his attestation as such full faith and credit are and ought to be given.

[SEAL.] In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed on this 28th day of January, one thousand eight hundred and ninety-three.

L. A. GRANT,
Assistant Secretary of War.

1. Insert title of office.
2. To be signed by the officer in charge of the office.

(See muster-rolls marked pp. 267, 268, 269, & 270.)

137 EXHIBIT R. L. W. No. 2.

Filed Apr. 25, 1893.

In the Matter of the Estate of SARAH JANE MANSON, Deceased.

To the honorable the judges of the orphans' court for the city and county of Philadelphia:

The petition of Elizabeth G. Manson, administratrix *de bonis non c. t. a.* of the estate of Sarah Jane Manson, dec'd, respectfully represents that there is no personal estate of said decedent to the knowledge of petitioner, the same having been fully administered by the administrator *c. t. a.* of the said decedent; that said decedent died seized in fee of and in all that certain lot or piece of ground situate on the north side of Maple street at the distance of sixty feet eastward from the east side of *of* Sixty-second street, in the Twenty-fourth ward of the city of Philadelphia, containing in front or breadth on the said Maple street forty feet and extending in length or depth of that width at right angles with Maple street one hundred and twelve feet and six inches, bounded on the north by lots granted to M. Hoopes, on the east by lot granted to A. Black, on the west by ground now or late of Thomas F. Butcher, and on the south by Maple street aforesaid, and that your petitioner has no knowledge of any other real estate belonging to the estate of the said decedent.

That the estate of said decedent is indebted to the estate of William L. Manson, dec'd, in the sum of two thousand and fifty-one dollars and twenty-six cents (2,051.26), as appears from the adjudication upon the account of your petitioner's predecessor in this trust, filed to July T., 1873, No. 152, and there are no other debts of said decedent so far as your petitioner knows.

Your petitioner therefore prays for an order authorizing her to make sale of the premises above described for the purpose of paying the debts of decedent.

And she will ever pray, &c.

ELIZABETH G. MANSON.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Elizabeth G. Manson, being duly sworn according to law, deposes and says that the facts set forth in foregoing petition are just and

true to the best of her knowledge and belief, and that the statements as to the personalty and debts of said decedent therein contained are just and true.

ELIZABETH G. MANSON.

Sworn and subscribed before me this sixteenth day of June, A. D. 1886.

F. T. CLARK,
Notary Public. [SEAL.]

138 And now, June 19, 1886, on filing within petition, leave is granted adm'r within named to sell within-described real estate for payment of debts as prayed for.

W. N. ASHMAN.

In the Orphans' Court of Philadelphia County, April T., 1886. No. 472.

In Re the Estate of SARAH J. MANSON, Deceased.

And now, June 19th, 1886, on filing within petition, leave is granted Elizabeth G. Manson, administratrix, to sell within-described real estate, to wit, all that certain lot or piece of ground situate on the noth side of Maple street at the distance of 60 feet eastward from the east side of 62nd street, in the 24th ward of the city of Philadelphia, containing, in front or breadth on the said Maple street, 40 feet, and extending in length or depth of that width at right angles with Maple street 112 feet 6 inches, bounded on the north by lots granted to M. Hoopes, on the east by lot granted to A. Black, on the west by ground now or late of Thomas F. Butcher, and on the south by Maple street aforesaid.

For payment of debts as prayed for.

By the court:

[SEAL.] WM. B. KINSEY,
Clerk O. C.

In the Orphans' Court for the City and County of Philadelphia.

In the Matter of the Estate of SARAH J. MANSON, Deceased.

To the honorable the judges of the said court:

The petition of Elizabeth G. Manson, administratrix *d. b. n. c. t. a.* of said decedent, respectfully represents that in compliance with the order of sale granted on the 19th day of June, 1886, a copy of which is hereto annexed, and after due and legal advertisement in the newspapers and by hand-bills, one of which is hereto annexed, she did, on the 14th day of July, A. D. 1886, at twelve o'clock noon, at the Philadelphia exchange, by James A. Freeman & Co., auctioneers, expose to sale the premises in said order described, and then and there sold the same to Edward W. Patton for the price or sum of four hundred and fifty dollars, he being the highest and best

bidder, and that the highest and best price bidden for the same, and she therefore prays that the said sale may be confirmed upon entering security according to law.

And she will ever pray, &c.

ELIZABETH G. MANSON.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Elizabeth G. Manson, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true.

ELIZABETH G. MANSON.

139 Sworn and subscribed before me this fifteenth day of July, A. D. 1886.

F. T. CLARK,
Notary Public. [SEAL.]

And now, viz., July 17, 1886, on filing within return, it is ordered that the sale of premises within described to Edward W. Patton for four hundred and fifty dollars be confirmed, security to be entered in $900, to be approved by the clerk.

W. N. ASHMAN.

Orphans' Court Sale.

Estate of SARAH J. MANSON, Dec'd.

J. A. Freeman & Co., auctioneers.

Building lots, Maple St. (1st street below South), east of 62nd street, of Philadelphia county.

Under authority of the orphans' court, April term, 1886, No. 472, will be sold at public sale, at 12 o'clock noon, on Wednesday, July 14, '86, at the Philadelphia exchange, N. E. cor. Third and Walnut streets, all that certain lot or piece of ground situate on the north side of Maple street at the distance of 60 feet eastward for the east side of 62d street, in the 27th ward of the city, containing in front or breadth on Maple street 40 feet and extending in length or depth of that width at right angles with Maple street 112 feet 6 inches.

$100 to be paid at the time of sale.

By the court:

WM. B. KINSEY, *Clerk O. C.*
ELIZABETH G. MANSON,
Administratrix.

For further particulars apply to Edward D. McLoughlin, Esq., att'y-at-law, No. 433 Chestnut St.

JAMES A. FREEMAN & CO.,
Store 422 Walnut St., Auctioneers.

W. H. Pile, printer, 422 Walnut St.

Estate of SARAH JANE MANSON, Dec'd.

Know all men by these presents that we, Elizabeth G. Manson, administratrix, and John W. Christman, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of nine hundred dollars, lawful money of the United States of America, to be paid to the said Commonwealth; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and every of them, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 23rd day of July, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas at an orphans' court for the county of Philadel-
140 phia, held on the 17th day of July, 1886, the court confirmed the sale of real estate made by the above-bounden Elizabeth G. Manson, adm'tr'x of the real estate of said decedent in the proceedings particularly specified, upon security being entered in the above-mentioned sum:

Now, the condition of this obligation is such that if the above-bounden Elizabeth G. Manson, adm'tr'x as aforesaid, shall faithfully execute the trust and properly appropriate the proceeds of such real estate according to the trust and decree of the court and according to law, then this obligation to be void; or else to be and remain in full force and virtue.

ELIZABETH G. MANSON. [SEAL.]
JOHN W. CHRISTMAN. [SEAL.]

Sealed and delivered in the presence of—

——— ———.

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I hereby certify the foregoing to be a true and accurate copy of the petition of Elizabeth G. Manson, administratrix *d. b. n., c. t. a.*, &c., and the decree of the court of June 19, 1886, thereon; also the order of sale and the return thereto and the decree of the court of July 17, 1886, thereon; also the bond filed in the *re* estate of Sarah J. Manson, deceased, as full and entire as the same appears of record in the office of the clerk of the orphans' court of the said county.

Witness my hand and seal of said court this 23d day of January, A. D. 1893.

[SEAL.]

WM. G. SHIELDS,
Clerk of Orphans' Court.

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, William B. Hanna, president judge of the orphans' court of Philadelphia county, do certify that the foregoing certificate and attestation made by William G. Shields, Esq., register of wills and *ex officio* clerk of said orphans' court, whose name is thereto subscribed and seal of said court affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 23d day of January, in the year of our Lord one thousand eight hundred and ninety-three (1893).

WM. B. HANNA, [L. S.]
President Judge.

STATE OF PENNSYLVANIA, *Philadelphia County,* } ss:

I, Wm. G. Shields, Esq., register of wills and *ex officio* clerk of the orphans' court of Philadelphia county, do certify that the Honorable William B. Hanna, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at
141 *at* the time of making thereof and still is president judge of the orphans' court of Philadelphia county, duly commissioned and sworn; to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 23rd day of January, in the year of our Lord one thousand eight hundred and ninety-three (1893).

[SEAL.] WM. G. SHIELDS,
Register of Wills and ex Officio Clerk of the Orphans' Court.

Order to Place Cause on Calendar.

MANSON *vs.* DUNCANSON. } Equity. 14017.

The clerk will please calendar this cause for hearing on the May term.

C. H. ARMES,
Sol. for Plaintiff.

Motion to Extend Time to Take Testimony of Defendant.

Filed Apr. 27, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON *vs.* CHARLES C. DUNCANSON. } Equity. 14017, Docket 34.

To Charles H. Armes, Esq.:

And now comes the defendant, by his attorney, and moves the court to extend the time for taking of testimony in this case for 10 days.

HENRY WISE GARNETT,
Sol'r for Def't.

To Charles H. Armes, Esq., solicitor for the complainant:

Please take notice that the above motion will be made to the court on Thursday, April the 27th, at the meeting of the same, at 10 o'clock, or as soon thereafter as counsel can be heard.

HENRY WISE GARNETT,
Sol'r for Def't.

Service accepted April 24, 1893.

C. H. ARMES.

142 *Order Extending Def't's Time 10 Days.*

Filed Apr. 27, 1893.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } No. 14017.

On motion of solicitor for defendant and upon his statement to the court that he was unable by reason of the sickness of Charles Walter, a material witness, to take his deposition, it is this 27th day of April, A. D. 1893, ordered that the defendant have and leave is hereby given him to take the testimony of said Walter, and ten days is allowed him to take said testimony upon the usual notice in contradiction of the testimony of the complainant Manson as to the residence and occupation of his alleged mother.

A. B. HAGNER.

Order to Calendar Case for June Term.

Order Book 13, page 92.

MANSON
vs.
DUNCANSON. } Eq. No. 14017.

The clerk will please calendar this cause for hearing at the June term of the equity court.

C. H. ARMES,
Sol'r for Plaintiff.

Stipulation as to Testimony of P. Donnery.

Filed May 25, 1893.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } No. 14017.

It is hereby stipulated and agreed between the solicitors for the complainant and defendant that if the deposition of Patrick D nery were taken as a witness for the defendant he would testify as follows: That he is the identical P. Donnery who served as a commissioner in executing (as shown by the commission) a commission issued by the supreme court of the District of Columbia, on the 4th day of November, A. D. 1874, in the suit of William L. Manson *vs.* Erastus Poulton *et al.*, No. 3796, equity; that he signed the
143 same and executed it, as is shown on its face, at Fort Clark, in the State of Texas, with the other two persons whose names are signed thereto; that Joseph Rendlebrook was captain of the same company, and Evans, Levy, and himself members thereof with the Frederick L. Manson therein named in the 4th U. S. cavalry; that the said Frederick L. Manson therein named appeared personally before the said persons whose names are signed thereto as commissioners, as stated in said commission, and the said guardian *ad litem* signed the same as therein stated.

And it is stipulated and agreed that this agreement shall be considered and treated as the deposition of said P. Donnery.

C. H. ARMES, *Sol. for Plaintiff.*
HENRY WISE GARNETT,
Sol. for Def't.

Testimony for Defendant.

Filed May 25, 1893.

In the Supreme Court of the District of Columbia.

MANSON
vs.
DUNCANSON. } In Equity. No. 14017.

WASHINGTON, D. C., *March* 14, 1893—3 o'clock p. m.

Met pursuant to notice.
Present on behalf of the complainant: Mr. Armes.
Present on behalf of the defendant: Mr. Garnett.

Whereupon JAMES W. BARKER, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined—

By Mr. GARNETT:

Q. State your name, age, residence, and occupation.

A. My name is James W. Barker; my residence is 1106 H street northwest; I am 72 years old; I have been a builder, but am not doing much of anything now.

Q. How long have you lived in this city?

A. I came here in 1837.

Q. Did you live here in 1860 and up to 1865?

A. Yes, sir.

Q. Were you living here in 1866 and 1867?

A. Yes, sir; I have lived here since 1837.

Q. Do you know a certain Sarah Margaret Jane Manson?

A. Yes, sir; I knew a woman who went by that name, but I don't — whether it was her or not.

Q. Did she ever live in this city?

A. Yes, sir.

Q. Where did she live?

A. She lived on 12th street between C and D.

144 Q. Is that a part of the ground now occupied by the city post office?

A. Yes, sir.

Q. It is on the east side of 12th street, then?

A. Yes, sir. I forget what the number of the square is.

Q. Is it the square now occupied by the city post office?

A. Yes, sir.

Q. About what time did she live there, if you know?

A. I expect she went there in 1862. I was under the impression it was 1861, but it was 1862, I reckon. It was soon after the commencement of the war.

Q. How long did she live there?

A. I have no idea how long. I suppose it was ten years or more, but I don't know how long. She lived there until after she paid me for the houses.

Q. Did she buy the houses from you?

A. She bought two houses from me. She lived there, and I think I gave them three or four years or more to pay for the houses in. My recollection is they lived there until after they paid me the money for the houses. I sold them the houses.

Q. You say you think she came there in 1861?

A. I think she came in 1861, but I think you showed me a deed that was dated in 1862. I thought before that it was 1861. I had no idea I held the houses as long as that after the commencement of the war.

Q. Did she come about the time the deed bears date?

A. Yes, sir.

Q. You say she paid you how long after that?

A. My impression is she paid me when I first sold them $1,500 in cash and was to pay me $1,500 a year.

Q. Where was she living in 1863?

A. She was living in these houses on 12th street. The two houses were 40 feet front.

Q. When did you say she finished paying you?

A. I don't know. I passed the notes off. I think they were released about 1865; but I passed the notes off.

Q. Do you know whether she was living ther- in 1865?

A. I don't know, but I think she was. I am not certain about that.

Q. You are certain that she was here in 1863?

A. Yes, sir; she was here in 1863 and 1864. She lived here when the property was released to her.

Q. Did she live here when the property was released?

A. Yes, sir. The date of the release will show whether it was released to her or to her husband or to the man purporting to be her husband.

Q. Do you know whether he was her husband or not?

A. No; I don't know, sir.

Q. Did she carry on any business in these houses?

A. Well, it is said that she did, but I don't know.

Q. What was the character of the houses?

145 A. They were bawdy-houses, sir, I have no doubt.

Q. She was there in 1864?

A. Yes; they were living in the house when the papers were released.

Q. They were released in 1865. So she was there in 1864?

A. Yes, sir; she lived there from the time they bought the houses. They went right into them.

Mr. GARNETT: I offer in evidence a deed from James W. Barker and wife and William L. Manson and wife to William R. Woodward, dated August 2d, 1862, and recorded in Liber J. A. S. 219, folio 391, one of the land records of the District of Columbia.

I also offer in evidence a deed from William L. Manson and wife to Erastus Toulson, dated August 2nd, 1862, and recorded in Liber J. A. S. 226, folio 21, one of the land records of the District of Columbia.

I also offer in evidence the record of a deed from William Redin, trustee, and others to William R. Woodward, dated June 2d, 1864, recorded in Liber N. C. T. No. 38, folio 155.

I also offer in evidence the record of a deed of release from William R. Woodward, trustee, to Erastus Poulson, dated August 2d, 1865, and recorded in Liber N. C. T. No. 65, folio 3. I hereby give notice that I will read the record of these deeds at the hearing of this cause.

Cross-examination.

By Mr. ARMES:

Q. You have resided in this city continuously for the past four months or six months?

A. Yes, sir.

Q. You spoke of brick houses on 12th street. Are they the houses

and is that the property described in these deeds that have just been offered in evidence?

A. Yes, sir.

Q. There were two houses and lots, were there not?

A. There were two houses and lots, sir; two houses 20 feet front each. I originally bought 80 feet of ground from the Hagner estate. I bought 80 feet of ground there, and my partner's family and myself divided it after we quit business. I took this half of the ground and improved it.

Q. Of these two houses Mr. Duncanson, the defendant in this suit, now owns one, I believe?

A. I don't know.

Q. You don't know about that?

A. No, sir; I don't know about that. The deeds were given for two houses, 20 feet front.

Q. You don't know, then, whether all that property—that is, the two houses—is included in this suit or not?

A. I don't know anything about this suit. I knew nothing about it until I came here and saw Mr. Duncanson. I did not know
146 what suit it was or anything of the kind. I just got a notice yesterday evening to come here. I do not know what property is involved in the suit or whether it is one house or both.

Q. Have you executed any deeds of this property of any sort to any person since these conveyances were made that have been offered in evidence today?

A. I have.

Q. What deed?

A. I executed a quitclaim deed about the time the Government bought. There was a mistake in making the deed by Mr. Redin, and they have got my name down as Barber instead of Barker. To correct that deed I made a quitclaim deed. The name was copied in the deed as Barber instead of Barker, as I understand.

Q. And it was for the purpose of correcting that mistake that you executed the quitclaim deed?

A. It was.

Q. And it was for no other purpose?

A. No other purpose.

Q. You understood that was necessary to perfect the title?

A. Yes, sir.

Q. How often did you see Mrs. Manson in 1863?

A. It would be impossible for me to give any idea. I saw her but very seldom.

Q. How often did you see her in 1864?

A. I don't know; but not often. I very seldom met her, and when I did I met her on the street. I never went to her houses.

Q. Did you see her a dozen times each year?

A. I couldn't say. I could not begin to say.

Q. Did you see her a half dozen times a year?

A. I suppose I did. The probability is that they would come to see me about making these payments and the like of that, and my

impression is that these payments extended for five years and maybe longer; but I don't know that I am exactly accurate about that.

Q. How often did you see her in the year 1865?

A. I have no idea.

Q. Did you see her seldom or often?

A. Well, the probability is I may have met her two or three times a year, or twice, maybe. It has been a long time ago, and I have no interest in these parties at all.

Q. Do you remember how often payments were to be made to you and how often payments were in fact made?

A. It is impossible for me to say that with any accuracy, without I had the deeds of trust to look at.

Q. I would like to know, as nearly as you can state, how often, as a matter of fact, you saw Mrs. Manson in either of these years.

Mr. GARNETT: I object to that for the reason that the witness has answered it three times and has given his statement as to why he cannot answer it more explicitly.

147 By Mr. ARMES:

Q. Can you say that you did, as a matter of fact, see Mrs. Manson on an average of three times a year between 1862 and 1865?

A. I guess I can say positively that I did. I have no idea but what I have seen her that often and oftener during those years.

Q. You cannot say positively?

A. I cannot swear positively that I have, for it has been a long time ago, and I had no interest in these things after my money was paid.

Q. You never visited the houses?

A. No, sir.

Redirect examination.

By Mr. GARNETT:

Q. You had business with her running over 1865, as I un-stand you?

A. Yes, sir.

Q. She paid up the money before the five years were out?

A. She paid up before the time was out; that's my recollection.

Q. And in consequence of this business, as I understand you, you would meet her, and people were coming to see you, with reference to these business matters?

A. She and the gentleman who was with her generally came to my house.

Q. That is the reason why you kept the run of her as to where she was?

A. Yes, sir.

Mr. ARMES: I object to these questions and answers as leading and suggestive.

JAMES W. BARKER.

Subscribed and sworn to before me this 24th day of May, A. D. 1893.

WM. HERBERT SMITH,
Examiner in Chancery.

Mr. GARNETT: I here give notice that the other witness I expected to have today is sick in bed, and that I shall therefore move the court for leave to take his testimony as soon as he is able to be out. The witness is Charles Walter, Sr.

The further taking of these depositions was therefore adjourned subject to notice.

WASHINGTON, D. C., *May 5th*, 1893—11.30 o'clock a. m.

Met, pursuant to notice, at the residence of C. A. Walter, No. 126 Massachusetts avenue northwest.

Present on behalf of the complainant: Mr. Armes.

Present on behalf of the defendant: Mr. Garnett.

148 Whereupon CHARLES WALTER, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, was examined—

By Mr. GARNETT:

Q. State your name, residence, and occupation.

A. My name is Charles Walter; my residence is No. 126 Massachusetts avenue northwest; I am an attorney at law, justice of the peace, notary public, and United States commissioner; I am of lawful age.

Q. I will ask you whether you were living in this District in the years 1860, 1861, 1862, 1863, 1864, 1865, and continuously since that time.

A. All that time I have been living here. I have never changed my residence.

Q. Between the years 1861 and 1865 did you hold any position under the Government?

A. A position as justice of the peace.

Q. Did you hold any other position?

A. I had some kind of a confidential position, which I shall not disclose.

Q. Did that position which you held cause you to have any peculiar knowledge as regards the houses of ill fame in this city?

Mr. ARMES: I object to any inquiry based upon a position that is special and not revealed.

A. It did.

Q. During these years did you become acquainted with or did you know a certain woman who passed under the name of Sarah Margaret Jane Manson?

A. I don't know the middle names, but Sarah Manson—yes.

Q. Do you know whether a man was living with her at that time by the name of William L. Manson?

A. No, sir; I only occasionally saw a man who called himself by that name, but she positively denied having anything to do with him.

Mr. ARMES: I object to the answer as being entirely irresponsive to the question, and to the question as immaterial.

Q. What was the business of this Sarah Manson? What was her occupation, if she had any, during the years 1861, 1862, 1863, 1864?

Mr. ARMES: I object to the question as immaterial and irrelevant.

A. She kept a house of ill fame down there on 12th street below D, between C and D.

Q. On which side of the street?

A. On the east side.

Q. Was that the same square which has now been taken by the Government for the post-office of this city.

149 A. I believe it is the same square. It is where the Star office formerly was.

Q. Do you know whether she was residing in this city and at that place during the year 1861?

A. I could not state exactly the date, but I think it was in 1861—the latter part of 1861, I think.

Q. Was she there in 1862?

A. Yes, sir.

Q. Was she there in 1863?

A. Yes, sir.

Q. Was she there in 1864?

A. I am not sure about that. If I had my books, if they had not been stolen, I could give you all of the particulars for every house here.

Q. You say you saw a man named William L. Manson. Where did you see him?

A. I saw him two or three times in that house. He was generally called a bummer.

Q. Did you have any conversation with her about this William L. Manson?

Mr. ARMES: I object to the question as immaterial and irrelevant.

A. I did.

Q. What was the conversation?

Mr. ARMES: I object to him stating the conversation as entirely immaterial and irrelevant and incompetent. I object to the statement as hearsay.

A. Well, he had to go by some name like the rest of them did.

Q. I want to know what passed between you about this man Manson in this conversation.

Mr. ARMES: I object to the question as immaterial and incompetent.

A. She told me that she was not married.
Q. What else did she tell you about Manson?
A. Oh, well, it was just like any of the rest of these men that came in here during the war.

Mr. ARMES: I object to the question as immaterial and irrelevant.

Q. Did you ever have any conversation with this woman about whether she had any children or not?

Mr. ARMES: I object to the question as immaterial, irrelevant, and incompetent.

A. I don't think I heard that question asked, but some other parties asked about it.
Q. Did you ever hear her make a statement?
A. She laughed at the idea of her having children—my having children; oh, no. I did not ask her about it.
Q. What did you hear her say about it?

150 Mr. ARMES: I object to the question as immaterial and irrelevant and as calling for hearsay evidence.

A. She said, Where should I get children with my occupation and my situation? Or something like that.
Q. Did you see any children around the house?

Mr. ARMES: The question is objected to for the same reason.

A. I think not.
Q. Was anything said by her in your presence about any children of Manson by another wife?

Mr. ARMES: The question is objected to as leading and for the reasons above stated.

A. No, sir.
Q. How did she come to laugh at the idea of her having children?
A. Well, some fellows made fun of her and wanted to know about her husband and if she had any children. Husband and children, said she, No. Where should I get children from? I never was married and never had a husband. I have got a man, just like any other woman has got a man, meaning a woman of this state keeping a house of ill fame. At that time it was always so, that every one brought some man along for their protection, as they called it.
Q. Do I understand you to say that she said she never had any children?

Mr. ARMES: I object to the question for the same reasons.

A. That is what she said.
Q. Was anything said by her in your presence about adopting any children or taking other people's children to raise?

Mr. ARMES: I object to the question as leading, suggestive, immaterial, and incompetent.

A. She did not say anything like that.

Q. Do you know whether she had ever adopted any children?

Mr. ARMES: The question is objected to for the same reasons.

A. I do not know of my own knowledge. I never heard of it. I did not get it out of her own mouth. All I heard was what was stated previous to that time.

Q. What is that?

A. When her friends asked her about these children, etc. She did not speak anything about adopting children. She simply said she had no children.

Q. Did you learn at any time that she had adopted any children?

Mr. ARMES: The question is objected to as irrelevant, immaterial, suggestive, and leading.

A. I cannot swear to that. I don't remember.

151 Q. Do you remember whether she remained here until the close of the war?

A. I am not positive about that, but I think she did. I saw her after the war was over, but I did not ask her any questions at all or whether she was keeping that house or not.

Cross-examination.

By Mr. ARMES:

Q. Are you in good health now?

A. I am not.

Q. You have been in bad health for how long?

A. For about four months.

Q. I see that you are able to be about your house where you are now testifying, and I will now say that I am very glad of it. To what extent have you been ill for 4 months past?

A. I had inflam-ation of the bowels, and I have some of the old grippe in me yet which I had two years ago.

Q. Are you as well today as you have been for the past week or two weeks?

A. I feel a great deal better than I did yesterday. Yesterday I could not have testified to anything.

Q. How long have you been confined to your house and unable to be out?

A. I was out once or twice in four months, just to take a little walk.

Q. Only once or twice in the last four months?

A. Yes, sir.

Q. Have you been to your office lately?

A. I have been over there for about an hour and then walked home again. That was last Monday.

Q. How long before that were you at your office?

A. I think I passed there once on Sunday. I took a walk around

the park and I just stopped over there and opened it to see whether it was all right and then I came right home again.

Q. You have transacted no business at all, I understand you, for the past four months?

A. I transacted some business here.

Q. Here at your house?

A. Yes, sir; the kind of business which I could transact here in the house. I took some affidavits and some acknowledgments for some parties who came here.

Q. In the past four months?

A. Yes, sir.

Q. You have been able to be about the house?

A. Not all of the time.

Q. And transact business of that kind the greater portion of the time during the past four months?

A. Yes; I might say the greater portion of the time.

Q. Have you been to your office only once in the last four months?

152 Mr. GARNETT: I object to the question as having been already answered.

A. No, I said I was over there last Monday for about an hour and a half, getting some papers out of which — must be used and which I delivered to the parties. I had to come home again.

Q. When were you at your office before that, the last time?

A. One Sunday morning; I just looked in there to see whether it was all right or not. I saw it was all right and I closed up again and came home.

Q. Have you not been at your office every week for the past three or four months?

A. No, sir.

Q. Every two weeks?

A. No, sir.

Q. But I understood you to say that you have been transacting business here?

A. I did.

Redirect examination.

By Mr. GARNETT:

Q. I understood that you have sometimes transacted business, such as taking affidavits or acknowledgments at your house?

A. Yes, sir.

Q. You have not been in the condition to transact business all the time here?

A. Not all the time; sometimes I had to go to bed and send the parties away.

Q. How is your memory and recollection?

A. Well, I recollect everything.

The reading of the deposition to this witness, in the presence of counsel, is hereby waived by counsel for the respective parties.

CHARLES WALTER.

Subscribed and sworn to before me this 17th day of May, 1893.

WM. HERBERT SMITH,
Examiner in Chancery.

DISTRICT OF COLUMBIA, *ss:*

I, William Herbert Smith, an examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the foregoing depositions were taken down by me in shorthand at the time and place mentioned in the caption thereof from the oral statements of said witnesses; which said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that said depositions were thereupon read over by said witnesses and subscribed to by them in my presence.

153 I further certify that I am not of counsel in said cause or otherwise interested in the result of said suit.

WM. HERBERT SMITH,
Examiner in Chancery.

Fee, 15.00.
Paid by def't.

WM. HERBERT SMITH, *Examiner.*

Motion to Set Cause for Hearing.

Filed Jun- 8, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

Now comes the plaintiff, by his counsel, and moves the court to set this cause for hearing at an early day during the present term, to be fixed by the court, and for cause of said motion shows that when the case was reached for hearing in the regular call of the calendar at the June term now pending it was passed on account of counsel for defendant being engaged in another court.

C. H. ARMES,
Attorney for Plaintiff.

Take notice that on Monday, the 12th day of June, 1893, upon the opening of the court at 10 o'clock a. m., or as soon thereafter as the court will hear the same, I shall submit the above motion to the hon. justice holding equity court No. 2.

C. H. ARMES,
Att'y for Plaintiff.

To H. W. Garnett, Esq., sol. for defendant.

Service accepted this 8th day of June, 1893.

HENRY WISE GARNETT,
Per WHEELER, JR.

Order Continuing Motion to Set Cause for Hearing.

Filed Jun- 12, 1893.

In the Supreme Court of the District of Columbia.

FRED'K L. MANSON
vs.
CHARLES C. DUNCANSON. } Eq. No. 14017.

The motion of the plaintiff filed the 8th day of June, 1893, to set this cause for hearing is continued this 12 day of June, 1893, until Wednesday, the 13th instant.

E. F. BINGHAM, *C. J.*

154 *Final Decree.*

Filed Jun- 14, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

This cause, coming on to be heard upon the pleadings and testimony at a former term, was argued by counsel and was taken under advisement by the court; and it appearing to the court from an examination of the record in equity cause numbered 3796, referred to in this cause, that there was nothing set forth and contained therein to give the court jurisdiction to sell the real estate described therein—

It is therefore this 14th day of July, A. D. 1893, ordered, adjudged, and decreed as follows: That the decree in said cause numbered 3796, bearing date 19th day of March, 1875, and all decrees and orders therein were and are null and void and of no effect.

That each and all deeds made under and by virtue thereof were and are void and passed no title; that the defendant, Charles C. Duncanson, had no title to the land and premises condemned as parcel numbered 15, mentioned in this cause, at the time of said condemnation, and is not entitled to the proceeds thereof now in the registry of this court, but that the plaintiff herein was and is owner thereof; that the defendant's plea of laches is not sustained; that said proceeds of said parcel numbered 15 now in the registry of this court be paid and delivered to the plaintiff, Frederick L. Manson, his solicitor of record or assigns, and that the plaintiff have his costs of this suit, and that execution issue therefor.

From which decree the defendant gives notice of appeal, and the

appeal is allowed upon filing a bond in the sum of one thousand dollars.

By the court:

E. F. BINGHAM, *C. J.*

Order for Appeals to the Court of Appeals.

Order Book 13, p. 130.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } 14017.

The clerk will please enter an appeal by the defendant to the Court of Appeals from the decree passed in this cause on July 14th, 1893.

HENRY WISE GARNETT,
Sol'r for Def't.

July 17th, '93.

155 *Order for Citation.*

Filed Jul- 18, 1893.

In the Supreme Court of the District of Columbia, the 18th Day of July, 1893.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } In Equity. No. 14017.

The clerk of said court will please issue a citation to the Court of Appeals of the District of Columbia in the above-entitled cause.

HENRY WISE GARNETT,
Solicitor for Defendant and Appellant.

Citation.

Issued July 18, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } No. 14017. Equity.

The President of the United States to Frederick L. Manson, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia on the 4th day of September, A. D. 1893, pursuant to an appeal by Charles C. Duncanson from the decree of the supreme court of the District of Columbia, passed

on the 14 day of July, 1893, wherein Charles C. Duncanson is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 17 day of [SEAL.] July, in the year of our Lord one thousand eight hundred and ninety-three.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk.*

Service of the above citation accepted this 18th day of July, 1893.

C. H. ARMES,
Attorney for Appellee.

156 *Marshal's Return.*

Service of the within citation accepted by C. H. Armes, attorney for appellee, July 18, 1893.

D. N. RANSDELL, *Marshal.*

Notice of Motion for Approval of Bond.

Filed Jul- 20, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } No. 14017. Equity.

To Charles H. Armes, sol'r for F. L. Manson:

Take notice that I shall, on Thursday, July 20th, 1893, at 10 a. m. o'clock, offer to the justice holding the equity court for approval the appeal bond of Charles C. Duncanson in this cause, and the surety on said bond is Robert Boyd, residence, 1806 H St. N. W., in Washington city, D. C.

HENRY WISE GARNETT,
Sol'r for C. C. Duncanson.

Copy and service acknowledged this 17th day of July, 1893.

C. H. ARMES,
Attorney for Fred'k L. Manson.

Bond for Appeal to Court of Appeals, District of Columbia.

Filed Jul- 20, 1893.

In the Supreme Court of the District of Columbia.

FREDERICK L. MANSON
vs.
CHARLES C. DUNCANSON. } No. 14017. In Equity.

Know all men by these presents that we, Charles C. Duncanson, of the District of Columbia, as principal, and Robert Boyd, of the same place, as surety, are held and firmly bound unto the above-named Frederick L. Manson in the full sum of one thousand ($1,000.00) dollars, to be paid to the said Frederick L. Manson, his executors or administrators or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 17th day of July, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas the above-named Charles C. Duncanson has prosecuted an appeal to the Court of Appeals of the District of Columbia to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

157

Now, therefore, the condition of this obligation is such that if the above-named Charles C. Duncanson shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES C. DUNCANSON. [SEAL.]
ROBERT BOYD. [SEAL.]

Sealed and delivered in the presence of—
A. M. WHEELER, JR.
WILLIAM S. TOMPKINS.

In my opinion, this bond is good.

WM. A. McKENNEY.

Approved the 20th day of July, 1893.

A. B. HAGNER,
Justice S. C., D. C.

UNITED STATES OF AMERICA, }
District of Columbia. }

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 309, inclusive, to be a full, true, and correct transcript of the

record of all the proceedings had in said court in cause No. 14017, in equity, wherein Frederick L. Manson is complainant and Charles C. Duncanson is defendant, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 31 day of July, A. D. 1893.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 244. Charles C. Duncanson, appellant, *vs.* Frederick L. Manson. Court of Appeals, District of Columbia. Filed July 31, 1893. Robert Willett, clerk.

158 Court of Appeals, District of Columbia, January 17, 1894.

CHARLES C. DUNCANSON, Appellant,
vs.
FREDERICK L. MANSON. } No. 244.

The argument of this cause was commenced by Mr. Henry Wise Garnett, for appellant, and continued by Mr. C. H. Armes, for appellee.

Court of Appeals, District of Columbia, January 18, 1894.

CHARLES C. DUNCANSON, Appellant,
vs.
FREDERICK L. MANSON. } No. 244.

The argument of this cause was continued by Mr. C. H. Armes, for appellee, and concluded by Mr. W. F. Mattingly, for appellant.

159 Mr. Chief Justice ALVEY delivered the opinion of the court:

This case has arisen upon the conflicting claims of the parties appellant and appellee, to a fund paid into the registry of the court below by the United States, as directed by the act of Congress of June 25, 1890 (ch. 613), upon condemnation of real estate for the site of the new post-office building for this District, in square No. 323 of this city.

The questions necessary to be decided are much involved in certain judicial proceedings that have taken place, and it becomes necessary to state with some fullness those proceedings, and the contents of the title papers upon which such proceedings were founded, in order that it be made clear as to whether there was jurisdiction in the court and what has or has not been definitely and conclusively decided in regard to the rights of the parties, and to what extent they are bound thereby, if at all.

It appears that Sarah J. Manson, wife of William L. Manson, being possessed of separate estate in her own right, with her hus-

band's consent, entered into a contract with one Barker to purchase the property located in square No. 323 for $11,000, of which $1,500 was to be paid in cash, and for the balance she was to give her notes payable out of her separate estate, as they became due. The cash payment was made, and the notes were given and ultimately paid by the wife, S. J. Manson. On August 2, 1862, Barker and wife and Manson and wife united in a conveyance of the property to one W. R. Woodward in fee, in trust to secure the notes for the payment of the deferred installments of the purchase-money; and, upon the further trust, to permit Sarah J. Manson to occupy and enjoy the premises, and to receive the rents and profits thereof to her separate use; and upon full payment of all of said notes, to convey said property upon the trust and for the purposes declared for the benefit of said S. J. Manson, in and by a certain other deed or declaration of the parties, of the same date, and a certain Erastus Poulson, trustee.

This deed of trust to Erastus Poulson, referred to, declared that, after the notes secured by the deed to Woodward were fully paid, he, Poulson, his heirs and assigns, should stand seized of the property upon the following trusts, to wit: *in trust* for S. J. Manson for and during her life, and to permit her to occupy said premises and to receive the rents and profits thereof for her own sole and separate use, free from the interference of her then or any future husband, without any liability for or on account of such husbands.

It was further declared that it should be lawful for the said S. J. Manson, at any time, and from time to time, during her life, to dispose of the said premises, either by *absolute sale*, or by mort-
160 gage thereof, *as she might think proper;* in which conveyance the trustee should join; and such conveyance to be made as if Sarah J. Manson was sole and unmarried.

And in default of any such sale or mortgage, or so far as the same shall not extend, upon further *trust*, for such person or persons, and for such estate, and in such parts, shares and proportions as she, the said S. J. Manson, should or might, from time to time, by any deed or instrument of writing, or by her last will and testament, under her hand and seal, limit, direct or appoint, give or devise the same; and in default of any such limitations, directions or appointment, gift or devise, *in trust* for such child or children as she should leave surviving her and the issue of any deceased child or children equally, share and share alike; and for default of all such children or issue, then *in trust* for the right heirs of the said Sarah Jane Manson forever.

And it was further declared, that all moneys that should or might be raised by sale or mortgage of said premises, or any part thereof, should be paid to the said S. J. Manson, and be disposed of as she should or might think best, her receipt being a valid discharge therefor.

It is not denied or controverted, that S. J. Manson paid out of her own separate estate, as she was required to do, the notes mentioned in the deed of trust to Woodward; and that it was upon such payment that Woodward and Barker joined in the deed of release to

Poulson, trustee, to hold the estate upon the same trusts as those set forth in the deed to the latter of August 2, 1862.

Mrs. Manson, in her lifetime, sold a part of the property embraced in these deeds; and in September, 1870, she died in Bucks county, in the State of Pennsylvania, leaving a will, dated April 20, 1865, which was duly admitted to probate in Philadelphia, on September 12, 1870. By this will she directed her debts to be paid; and then she devised and bequeathed all her estate, real and personal, as follows: that her husband, William L. Manson, should take and receive all the rents and profits of her estate, during his life, to use and apply the same for his support, and the support and education of her three children, namely, Frederick L. Manson, William Henry Walters and Cecilia M. Manson; but if her husband should marry again, he should surrender the control of the children; and on the death of her husband, she devised and bequeathed all of her estate, real and personal, to be equally divided, share and share alike, between her said three children, when the youngest of them should reach the age of twenty-one years, and not before. Upon the admission to probate of this will, letters of administration, with the will annexed, were granted to William L. Manson, the surviving husband of the deceased, but the will, not being attested by more than two witnesses, and therefore not sufficient to pass real estate under the law in force in this District, has never been admitted to probate here, and there has been no administration in this District upon the estate of the deceased.

The administrator appears to have fully administered the estate in Philadelphia, and according to the auditor's report of the assets of the estate, and the debts proved against it, there was a deficiency of assets to pay the debts, to the extent of $2,051.26. This report of the auditor was approved and ratified by the court; and the administrator paid the amount of the deficiency thus shown, and became a subrogated creditor of the estate to that amount.

The surviving husband, thus becoming a creditor of the estate of his deceased wife, on the 18th of June, 1874, filed in the supreme court of this District a creditor's bill, asking for the sale of the real estate mentioned and described in the deeds of trust heretofore referred to, for the purpose of paying the debts of the estate. In this bill the property is described and treated as real estate, of which the wife had died equitably seized to her sole and separate use. She is also alleged to have died intestate as to this particular property. The deeds are specifically referred to as parts of the bill; and the letters of administration and a copy of the will annexed are also referred to and filed with the bill. The property is specifically described in the bill by metes and bounds; and the bill prayed that the property might be sold for the payment of the debts of the deceased; *and for such other and further relief as the nature of the case might require.*

The bill was filed against Poulson as trustee, and the three children of Mrs. Manson as her heirs-at-law, namely, William H. W. Walters, Frederick L. Manson and Cecilia M. Manson, the two latter being alleged and described as infants, under the age of twenty-one

years. They were all sued as being residents of Philadelphia. Process was prayed, and was issued to and returned by the marshal of this District not found. Thereupon orders were made by the court appointing commissioners to appoint guardians *ad litem* for the infant defendants, and to take the answers of such infants by the guardians so appointed. Commissions were issued, guardians appointed and answers taken, whereby all interests and rights of the infants were claimed but submitted to the court. Poulson, the trustee, answered the bill, admitting that he, as trustee, was seized of the legal estate in the property as charged, and, admitting all other facts charged in the bill, he submitted himself to the court. Walter, the other adult defendant, answered the bill, claimed all such interest in the premises as he might be entitled to, and submitted his rights to the court.

Upon this state of the case, the court, on the 19th of March, 1875, by its decree ordered and adjudged that the claim of the complainant set forth in the bill was, and should be, "recognized as a valid lien against the property described in the bill, and that said property be sold, and the proceeds of such sale be applied in satisfaction, first, of all proper taxes and assessments, or other prior incumbrances due and unpaid, upon said property; and, secondly, out of the balance, the claim of the complainant to be paid and satisfied, and the remainder, if any, be distributed *pro rata* between the heirs of Sarah M. J. Manson, deceased." A trustee was appointed to make the sale, and he was required to advertise the property
161 for sale, and after sale to report the same to the court, and upon final ratification by the court, he was authorized and required to "convey to the purchaser or purchasers, by good and sufficient deed, all right, title and interest of said defendants, or any of them, and of said complainant, in and to said property."

The sale was duly made, reported and finally ratified, and the terms of sale being complied with, the property was conveyed to the purchaser as directed by the decree. The proceeds of sale were distributed in accordance with the terms of the decree; but there does not appear to have been any remainder for distribution among the children or heirs of Mrs. Manson. The purchaser at the trustee's sale was Frederick Volk, who subsequently conveyed the property, with covenant of general warranty, to Louis, Edward, and Alexander Schmid, and the latter conveyed the property, with covenant of general warranty, to the present appellant.

Subsequent to the equity proceedings just referred to, William L. Manson, the complainant in that proceeding, and father of the present appellee, died, and it is not shown who represents his estate.

The condemnation proceedings, upon the application of the United States, took place in October, 1890, and the property in question was condemned as parcel No. 15, in square No. 323; and the value of the parcel was estimated at $17,000, and a United States Treasury draft for that sum was, on the 9th of October, 1891, deposited in the registry of the court below, and remains subject to the order of the court.

The present bill was filed by the appellee, on June 20, 1892, against the appellant alone, and without making either Poulson, the trustee, or the purchaser of the property, parties. In this bill the appellee claims the entire and exclusive right to the whole fund arising from the condemnation of the property, upon the ground that the proceedings and decree for the sale of the property for the payment of his mother's debts were wholly void, as being without jurisdiction to support them, and that, as he alleges, his brother and sister had died intestate, leaving him alone entitled.

By this bill he prays that all the proceedings on the bill filed by his father as creditor and the decree directing the sale of the property for the payment of his mother's debts, be declared utterly null and void for want of jurisdiction, and that all decrees, orders and proceedings had and passed in that cause be decreed to be without any effect whatever, because of the want of jurisdiction in the court, of either subject-matter or of parties. Also, that all deeds made of the property under said decree be declared null and void; and that the appellant be enjoined from claiming the fund deposited in the registry of the court, as stated in the bill; and that the appellee be decreed to be entitled to the entire fund.

In answer to this bill the appellant denies all the material allegations thereof, and insists that there was jurisdiction in the court to decree the sale of the property, and that he acquired under the decree a good and valid title to the property by the conveyance made to him; and he prays that he may have full benefit of all objections to the bill that could be raised and availed of upon demurrer thereto.

Replication was entered and proof taken, and the cause was brought on to final hearing; and upon such hearing the court below decreed, that the decree for sale of the property, of the 19th of March, 1875, passed in cause No. 3796, and all decrees and orders in that cause, were and are null and void, and of no effect; and that each and all deeds made to convey title under said decree were and are void, and passed no title to the land and premises condemned as parcel No. 15 in square No. 323; that the plaintiff, the present appellee, was and is entitled to the entire fund in the registry of the court, the proceeds of condemnation of parcel No. 15 and that the same be paid over to him, his solicitor of record, or assigns. It is from this decree that the present appeal is taken.

Upon this somewhat involved and complicated record, three principal questions are presented: 1st. Whether, in the passage of the decree for sale of the 19th of March, 1875, the court had competent jurisdiction of the parties to that cause to bind and conclude them by decree; and if so,

2d. Whether the court had jurisdiction over the subject-matter of a nature to render its decree unimpeachable in a collateral proceeding. And if either of these questions be determined in the negative and that none of the parties defendants were bound by the decree, then,

3d. Whether there is proof sufficient in this case to show that the

brother and sister of the appellee are dead, and if dead, that they died unmarried or if married without children or intestate?

1. With respect to the first of these questions, we think it clear that all the parties defendants to the creditor's bill filed by Wm. L. Manson were properly before the court to render them subject to its jurisdiction. There is no question as to the want of jurisdiction over any of the parties except the two infants—the present appellee and his sister. And it is only upon the assumption that the sister is dead and that she died childless and intestate, that the appellee is in a position to raise a question as to the effect of the decree upon her interest in the property. It is true there was no service of subpœna upon either the appellee or his sister; but there was what the law recognizes as a substitute for such service, and that is the appointment of a guardian *ad litem* by commissioners appointed by the court, and the taking of an answer by such guardian. And in the case of a non-resident infant defendant, that would appear to be the most feasible method in practice, both in England and in this country, of bringing the infant defendant before the court and rendering him subject to its jurisdiction. This is fully shown by Chancellor Bland in the case of Snowden *v.* Snowden, 1 Bland Ch., 550, 552, 554, and the precedents cited by him. The decree sought by the creditor's bill was not a personal decree against the infant defendants, but was a decree to affect and charge real property in which they were supposed to have an interest; and that being the case, it would seem to be fully covered and
162 concluded by the decision in the case of Ins. Co. *v.* Bangs, 103 U. S., 435, 440, and cases there cited. Moreover, Poulson, the trustee, was before the court, and he represented all the interests of the beneficiaries in the trust property. Kerrison, assignee, *v.* Stewart, 93 U. S., 155, 160. And in the absence of any charge or proof of fraud or collusion between the trustee and those adversely interested, it may even be doubted whether the children of Mrs. Manson were necessary parties; 93 U. S., 160.

However, it is insisted that, at the time of the taking of the answer of the appellee by guardian he was over twenty-one years of age, and he should not, therefore, be bound by such answer. The appellee himself admits in his testimony that he cannot pretend to be accurate in regard to his age; and his father seems to have regarded the appellee as a minor, for he so alleged the fact in his bill and he swore to it. The commissioners appointed to take the appellee's answer, treated him as a minor, and though he was personally present before the commissioners, according to their return, and the testimony of the guardian, it does not appear that he made any question of their right or power to appoint a guardian for him, or of the right of the guardian to answer in his behalf. There would seem to be no ground whatever for the pretense that he was not present when the guardian was appointed; the evidence shows clearly to the contrary.

But however the fact as to his age, in point of truth, may be, if he was of age at the time of his answer taken, as he contends he was, he could have put in an answer for himself, and it was his

duty to do so, (1 Dan. Ch. Prac., 116;) and he cannot be heard now to impeach the jurisdiction of the court by attempting to prove that he was not a minor when his answer was taken. The court, acting upon the proof before it, concluded that the appellee was a minor, and no proof now offered, as to that fact can affect the validity of the decree by way of collateral attack upon it. Thompson *v.* Tolmie, 2 Pet., 157, 163; Day *v.* Kerr, 7 Mo., 426.

2. The most material question in this case is, whether or not the court had jurisdiction over the subject-matter of the decree for sale of a nature to render that decree free from impeachment for want of jurisdiction in the court to pass it, in a collateral proceeding.

This is not a bill of review filed in the former cause for the correction of errors occurring in the record of that cause, but it is an original, independent bill, setting up claim to property as being in reality unaffected by the proceedings and decree in the former case, under which the defendant claims, and seeking to have that former proceeding declared null and void as a mere cloud upon the appellee's title, created by such proceeding, because taken in a court without jurisdiction of either person or subject-matter. It is, in other words, a proceeding wholly collateral, and the attempt is to attack and have declared null and void the decree of sale of the 19th of March, 1875, and all the titles acquired thereunder, and that too without having the parties interested in those titles before the court.

The question is, not whether there were errors in the proceedings; there may have been very gross errors; but whether there was jurisdiction. The law has provided the ways and means for the correction of errors in judicial proceedings; but, if jurisdiction exists, the judgment or decree of a court of competent jurisdiction binds and protects all parties concerned with it until duly reversed on direct proceeding for review. Upon any other theory of judicature, the judgments and decrees of courts, instead of being the highest and most conclusive evidence of rights, would be the sure means of deluding and ensnaring the unwary.

Now, it is certainly true, that the supreme court of this District has jurisdiction and power to decree the sale of the real estate of a deceased debtor, whether the title be legal or equitable, for the payment of debts; and upon the allegation that the deceased was seized either legally or equitably, and died indebted, there would be furnished a foundation for a decree of sale of such real estate for the payment of the debts. The bill of the creditor upon which the impeached decree for sale was founded, would seem to have been inartificially drawn, but we think there was enough alleged to show that the case was within the jurisdiction of the court. For notwithstanding the allegation that deceased was equitably seized of the real estate, that allegation should be construed with reference to the well-established principle which holds that where a person has a *general* power of appointment, such as was held by Mrs. Manson, and he *actually exercises* his power, whether by deed or will, the property appointed will, in the contemplation of a court of equity, form part of the assets of his estate, so as to be subject to the demands

of his creditors, in preference to the claims of his devisees, legatees or appointees. 2 Sug. on Pow., 27; 4 Kent Com., 339, 340; Brandies *v.* Cockrane, 112 U. S., 334, 352; Clapp *v.* Ingraham, 126 Mass., 200. It is true, in order to raise this equity, the power must be actually executed, for the technical reason that equity never aids or supplies the non-execution of a power. But this has been the subject of some contrariety of opinion, whether the equity did not attach as well in cases of non-execution as in cases of the actual execution of *general* powers. Holmes *v.* Coghill, 7 Ves., 499, 507. In this case the equity is very strong in favor of the creditors of the donee of the power. She purchased the estate and paid the full price therefor out of her own separate funds, and the reservation of the general power of appointment enabled her to dispose of the estate to whom she pleased—to herself or to any other person; and hence the property, the subject of such general power, has been regarded, both by legislatures and the courts of equity, as a proper fund for the payment of the debts of the donee of such power. 2 Crabb, Real Prop., 743; Wms. Real Prop., 200. If the will of the donee of the power had referred to or embraced the property, showing an intent to execute the power, and had been properly executed, or even defectively executed, so that a court of equity would have aided its execution, it would seem clear that the property
163 would have been treated as assets for the payment of the debts of the donee; and, in such case, it would be simply a question of construction of the will of the donee. 4 Kent. Com., 339, 340. All that, however, was for the court to determine when called upon to pass the decree for sale of the property to raise a fund for the payment of debts of the donee, and other incumbrances, provided for by the decree.

If the court was in error, as it would seem to have been, in passing the decree, it was the right, as it was the duty, of the defendants, if they desired to avoid the operation and effect of the decree, to have appealed therefrom, or to have the errors corrected by bill of review filed within the time allowed by law. But no such proceeding was taken, and the decree was allowed to stand; and it was not until after the lapse of more than seventeen years, and the rights of third parties had intervened, that an attempt is made to annul the decree and destroy all the rights acquired thereunder. This attempt ought not to be allowed to succeed, if there be any principle that can be fairly invoked to defeat it, and to preserve the rights of parties acquired upon the faith of the decree.

It is certainly the policy of the law to maintain judicial sales, and every reasonable intendment should be indulged to uphold them. Otherwise the public would become distrustful, and fair prices for property sold under judicial authority would seldom be obtained. Purchasers, while they are required to take notice of the existence and terms of the decrees or judgments under which they purchase, and as to the parties bound thereby, they cannot be required to become judicial critics, and to pass in review, at their peril, upon the correctness of the proceedings upon which the judgments or decrees may be founded. As was pertinently said by the

Supreme Court of the United States, in the case of Thompson *v.* Tolmie, 2 Pet., 168, "After a lapse of years, presumptions must be made in favor of what does not appear. If the purchaser was responsible for the mistakes of the court, in point of fact, after they had adjudicated upon the facts, and acted upon them, these sales would be snares for honest men. The purchaser is not bound to look further back than the order of the court. He is not to see whether the court was mistaken in the facts of debts and children. That the decree of the orphans' court in a case within its jurisdiction is reversible *only* on appeal, and not collaterally in another suit." It was further said, "that when a court has jurisdiction it has a right to decide every question that may arise in the cause; and whether its decisions be correct or not, its judgment, until reversed, is regarded as binding in every other court." These principles apply in all respects and with special force in this case. It was for the court whose decree is attempted to be impeached, not only to decide upon the facts before it, but upon the construction and legal effect of all deeds and muniments of title upon which the proceeding was based. The court having general jurisdiction over she subject-matter of decreeing the sale of real estate of a deceased debtor for the payment of debts, it had the right and was required to determine the question as to the liability of the property for the debts, and whether the case was within its jurisdiction; and though its decision may have been erroneous, it could only be reversed upon a direct appeal. This question has been treated with great clearness and force by Mr. Justice Brewer, in the case of Cooke *v.* Bangs, 31 Fed. Rep., 640, and much of the reasoning of the opinion in that case applies with peculiar force to this. And without an extended review of the authorities, we do not deem it necessary to do more than refer to the leading, and, as we think, conclusive cases upon this subject, of Thompson *v.* Tolmie, 2 Pet., 157; Voorhees *v.* Bank of United States, 10 Pet., 449; Grignon's Lessee *v.* Astor, 2 How., 319; Florentine *v.* Barton, 2 Wall., 210, 216; Hall *v.* Law, 102 U. S., 461, 464; White *v.* Crow, 110 U. S., 183, 188; Long *v.* Long, 62 Md., 33, 62; Newbold *v.* Schlens and Wilkins, 66 Md., 583, 591. Upon the reasoning and authority of these cases, we think it clear that the decree for sale of the property of the 19th of March, 1875, is not void, and therefore not subject to collateral impeachment, for want of jurisdiction of the court over the subject-matter of the suit.

The case of Shriver's Lessee *v.* Lynn, 2 How., 43, has been much relied on by counsel for appellee as supporting his contention. But we fail to perceive the application of the decision made in that case to the facts and conditions of the present. In that case, the trustee appointed by the decree, with authority to sell the land therein specifically mentioned and directed to be sold, proceeded to sell and report to the court for ratification, a parcel of land not embraced by the decree, and therefore never ordered to be sold; and of course the decree could not be invoked to protect the purchaser. As said by the court, the parcel of land then in controversy was not asked to be sold in the original equity cause, and it was not liable to be

sold, and the decree did not refer to it. It was clear, therefore, said the court, "that this sale was not made in pursuance of the decree. Neither in the petition nor in the decree was the tract of 100 acres named or referred to. This proceeding, then, by the trustee was without authority. It could derive no sanction from the decree." 2 How., 59.

3. With respect to the question as to the sufficiency of the proof of the death of the brother and sister of the appellee, unmarried, without issue, and intestate, after the conclusions we have reached on the two preceding questions, this third question becomes unimportant to be considered; though if it were necessary to decide it, we should be compelled to hold that the proof in this record is far from satisfactory upon the question of such supposed deaths. The proof at best is exceedingly meagre and indefinite, and not such as would afford a safe basis for a final decree.

There are other questions that would have been important in the consideration of the case, if our conclusions on the questions of jurisdiction had been different; such as the questions of laches. and of the want of necessary parties. These questions, however, have become, in view of our conclusions on the main questions of jurisdiction, immaterial, and therefore unnecessary to be decided.

It follows that the decree appealed from must be reversed, and the bill of the appellee be dismissed, with costs to the appellant; and it is so ordered.

Decree reversed and bill dismissed.

164 Court of Appeals of the District of Columbia, May Term, 1894.

CHARLES C. DUNCANSON, Appellant,
vs.
FREDERICK L. MANSON. } No. 244.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said supreme court with directions to dismiss the bill with costs.

Per MR. CHIEF JUSTICE ALVEY.

May 7, 1894.

165 Court of Appeals, District of Columbia, June 4, 1894.

CHARLES C. DUNCANSON, Appellant,
vs.
FREDERICK L. MANSON. } 244.

On motion of Mr. Walter H. Smith, for appellee, it is ordered by the court that said appellee be, and he is hereby, allowed an appeal to the Supreme Court of the United States herein, and bond for costs on said appeal fixed at the sum of $500 and supersedeas bond at $5,000.00.

166 In the Court of Appeals of the District of Columbia.

CHARLES C. DUNCANSON, Appellant,
vs.
FREDERICK L. MANSON, Appellee. } 244.

The motion for an allowance of an appeal by the appellee to the Supreme Court of the United States came on this 4th day of June, 1894; on consideration whereof the court allow said motion in open court and fix the appeal bond, if for costs alone, at five hundred dollars and if for a supersedeas at five thousand dollars; such bond to be approved by this court or some member thereof.

R. H. ALVEY, *Ch. Justice.*

(Endorsed:) No. 244. Charles C. Duncanson *vs.* Frederick L. Manson. Order. Order allowing appeal to Supreme Court U. S. and fixing amount of bonds. Court of Appeals, District of Columbia. Filed Jun- 4, 1894. Robert Willett, clerk.

167 Know all men by these presents that we, Frederick L. Manson, as principal, and Frank E. Smith and Albert T. Whiting, as sureties, are held and firmly bound unto Charles C. Duncanson in the full and just sum of five hundred dollars, to be paid to the said Charles C. Duncanson, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between the said Frederick L. Manson, appellant, and the said Charles C. Duncanson, appellee, a judgment was rendered against the said Frederick L. Manson and the decree of the court below reversed, and the said Frederick L. Manson having obtained in open court the allowance of an appeal to the Supreme Court of the U. S. in the aforesaid suit, and a citation directed to the said Charles C. Duncanson, citing and admonishing him to be and appear at a Supreme Court of the United

States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Frederick L. Manson shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

FRANK E. SMITH. [SEAL.]
A. T. WHITING. [SEAL.]

Sealed and delivered in the presence of—
——— ———.

Approved by—
R. H. ALVEY, *Ch. Justice.*

[Endorsed:] No. 244. Duncanson *vs.* Manson. Bond for costs on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed June 8, 1894. Robert Willett, clerk.

168 UNITED STATES OF AMERICA, *ss:*

To Charles C. Duncanson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, which order was made in open court in a certain cause wherein Frederick L. Manson was appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 8th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

R. H. ALVEY,
Ch. Justice of the Court of Appeals of the District of Columbia.

Service waived.
HENRY WISE GARNETT,
Of Counsel for Duncanson.

Jun- 8, 1894.

[Endorsed:] No. 244. Duncanson *vs.* Manson. Citation with waiver of service. Court of Appeals, District of Columbia. Filed Jun- 8, 1894. Robert Willett, clerk.

169 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-

written pages, numbered from 1 to 168, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Charles C. Duncanson, appellant, *vs.* Frederick L. Manson, No. 244, May term, 1894, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of June, A. D. 1894.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

170 In the Supreme Court of the United States.

FREDERICK L. MANSON, Appellant,
vs.
CHARLES C. DUNCANSON, Appellee. } In Equity.

And now comes the said Frederick L. Manson, appellant, and says that in the record and proceedings aforesaid there is error in this, to wit:

I. The said Court of Appeals of the District of Columbia erred in holding that the supreme court of the District of Columbia, sitting as a court of equity, had jurisdiction of the subject-matter in said cause No. 3796.

II. The said Court of Appeals erred in holding that the said supreme court in said cause had jurisdiction of the defendants therein or either of them.

III. The said Court of Appeals erred in reversing the de-
171 cree of the said supreme court.

IV. The said Court of Appeals erred in rendering a decree against this appellant for costs, and in directing the said supreme court to dismiss his bill against the said appellee.

Wherefore this appellant prays that the said decree of the said Court of Appeals may be reversed and that he may be restored to all things that he has lost by reason of said reversal.

WALTER H. SMITH,
CHARLES H. ARMES,
Sol'rs for Appellant.

172 In the Supreme Court of the United States, October Term, 1896.

FREDERICK L. MANSON
v.
CHARLES C. DUNCANSON. } No. 127.

In this case it is hereby stipulated that the clerk of the Supreme Court may omit from his printed record of this case the following, contained in the record of the Court of Appeals, to wit, pages 77

to 101, inclusive, with the exception of 10 lines at the bottom of said last-named page.

WALTER H. SMITH,
For Plaintiff.
WM. F. MATTINGLY,
Counsel for Appellee.

October 28th, 1896.

173 [Endorsed:] Case No. 15,620. Supreme Court U. S., October term, 1896. Term No., 127. Frederick L. Manson, appellant, *vs.* Charles C. Duncanson. Stipulation to omit part of record in printing. Filed October 28, 1896.

Endorsed on cover: Case No. 15,620. District of Columbia Court of Appeals. Term No., 127. Frederick L. Manson, appellant, *vs.* Charles C. Duncanson. Filed July 3, 1894.

166-52

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

166-53

FREDERICK L. MANSON

v.

CHARLES C. DUNCANSON.

No. 127.

Appeal from the Court of Appeals of the District of Columbia.

ARGUMENT FOR APPELLANT.

WALTER H. SMITH,
CHARLES H. ARMES,
Solicitors for Appellant.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1896.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

FREDERICK L. MANSON

v.

CHARLES C. DUNCANSON.

No. 127.

Appeal from the Court of Appeals of the District of Columbia.

STATEMENT OF THE CASE.

Square 323 in the city of Washington, D. C., was condemned for a post-office site. Parcel No. 15 in said square was appraised at $17,000, and the money brought into court. Both parties to this suit claim to be the true owner, and each claims the money paid into court.

Manson filed a bill in chancery in the Equity Court of the District of Columbia against Duncanson, asking the court to decree that his title to the premises was good and that the title of Duncanson was null and void.

That court decreed in his favor and ordered the condemnation money to be paid to him.

Chief Justice Bingham heard the case and made the decree.

Duncanson appealed to the Court of Appeals of the District of Columbia, and that court reversed the decree below and directed that the money be paid to him.

The case is now in this court on appeal from the last-named decree.

The record shows that both parties claim title to the premises from one James W. Barker.

Sarah J. Manson was the mother of the plaintiff, Frederick L. Manson, and the wife of William L. Manson.

She, with the consent of her husband, entered into a contract with the said Barker for the purchase of the property now in controversy and some other property in addition thereto.

She paid partly in cash and partly by her notes, which she afterwards paid.

Barker and wife and Manson and wife, August 2, 1862, conveyed the property to one W. R. Woodward, in fee, in trust to secure the deferred payments, and upon the further trust to permit Sarah J. Manson to occupy and enjoy the premises and to receive the rents and profits thereof to her separate use, and upon full payment of all the purchase money, to convey said property upon the trust and for the purposes declared for the benefit of the said Sarah J. Manson in and by a certain other deed or declaration of the parties, of the same date, made to Erastus Poulson as trustee. Both of said deeds are in the record and found on pages 10, 16.

This deed to Poulson declared that, after the purchase-money notes secured by the deed to Woodward were fully paid, he, Poulson, and his heirs and assigns, should stand seized of the property, upon the following trusts, to wit, in trust for S. J. Manson, *for and during her life*, and to permit her to occupy said premises and receive the rents and profits thereof to her own sole and separate

use, free from the interference of her then or any future husband, without any liability for or account of such husbands.

It was further declared that it should be lawful for the said S. J. Manson, at any time and from time to time, during her life, to dispose of the said premises either by absolute sale or by mortgage therof, as she might think proper, in which conveyance the trustee should join; and such conveyance to be made as if the said Sarah J. Manson were sole and unmarried. And in default of any such sale or mortgage or so far as the same shall not extend, upon further trust for such person or persons and for such estate and in such parts, shares, and proportions as she, the said S. J. Manson, should or might, from time to time, by any deed or instrument of writing, or by her last will and testament, under her hand and seal, limit, direct, or appoint, give or devise the same; and in default of any such limitations, directions, or appointment, gift, or devise, in trust for such child or children as she should leave surviving her and the issue of any deceased child or children, equally, share and share alike; and for default of all such children or issue, then in trust for the right heirs of the said Sarah Jane Manson forever.

And it was further declared that all moneys that should or might be raised by sale or mortgage of said premises, or any part thereof, should be paid to the said S. J. Manson and be disposed of as she should or might think best, her receipt being a valid discharge therefor. Woodward and Barker released to Poulson by deed dated August 2, 1865. (Record, page 19.)

Mrs. Manson sold a portion of the premises in her lifetime, leaving unsold and undisposed of said parcel No. 15, now in controversy.

She was a resident and citizen of Berks county, Pennsylvania, where she died in September, 1870, leaving three children, Frederick L. Manson, this plaintiff, and William Henry Walters, by a former husband, and Cecilia M. Manson.

The said Henry and Cecilia are both alleged to have departed this life before the commencement of this suit.

Mrs. Manson left a will by which she bequeathed her real and personal property to her husband for life. This will did not in any manner specify the real estate in controversy, except as the same might be included under the general head of all her real estate.

This will was executed by two attesting witnesses only, and was invalid by reason thereof to convey real estate in the District of Columbia.

It was admitted to probate in Philadelphia September 12, 1870, and letters of administration with the will annexed issued to her husband, William L. Manson.

There has been no administration of the estate in the District of Columbia.

There was administration of the estate in Philadelphia, by which, it is claimed, there was a deficiency of assets to the amount of $2,051.26, and that William L. Manson paid this amount, and thereby became entitled to receive the same from the estate.

On the 18th of June, 1874, William L. Manson filed in the Supreme Court of the District of Columbia a creditor's bill, asking for the sale of the premises now in dispute, for the purpose of paying his said claim of $2,051.26, and for general relief.

He made Erastus Poulson, as trustee, and Frederick L. Manson, William H. W. Walters, and Cecilia M. Manson, as children of Sarah J. Manson, defendants.

The bill alleged that William L. Manson was a citizen

of Philadelphia, in the State of Pennsylvania; that Sarah J. Manson died intestate as to her real estate in the District of Columbia; that she was seised at the time of her decease of the realty thereafter described, being the premises in controversy, in her own right, free and discharged from any claim, right, title, or interest of her husband, *as will more fully appear* by reference to three certain deeds, the first from James W. Barker and wife to William R. Woodward, dated August 2, 1862; the second from said William L. Manson and Sarah J. Manson to the said Erastus Poulson, trustee, dated August 2, 1862, and the other from W. R. Woodward and James W. Barker to said Erastus Poulson, trustee, dated August 2, 1865, all of record in the land records of Washington county, District of Columbia (setting out the volumes and pages where recorded, and a full description of the premises), "and *the said deeds as recorded are prayed to be taken as part of this bill.*"

Poulson, the trustee, answered, admitting all the matters set forth in the bill.

Walters answered, submitting his case to the court, and asking it to protect his interest.

Cecilia Manson answered by her guardian, appointed by a commission, that she was an infant under age, that she claimed such interest in the premises as she was entitled to, and prayed the court to protect that interest.

Commissioners were appointed to appoint a guardian and file an answer for Frederick L. Manson. Such guardian filed an answer alleging that he was an infant, under twenty-one years of age, and that he claimed such interest in the premises as he was entitled to, and submitted his interest to the protection of the court.

All of these answers were prepared by E. D. McLaughlin, who was the attorney for the plaintiff in the

case, and generally in matters of the estate, before the auditor and elsewhere, and who supervised the petition.

On the 19th of March, 1875, the equity court of the District of Columbia made its decree as follows:

"This cause coming on to be heard upon the pleadings, "a certified copy of the confirmed report of the auditor "of the orphans' court of Philadelphia, and duly con- "sidered by the court as proper to grant the prayer of "said complaint in said bill contained, it is therefore, "this 19th day of March, 1875, by the court ordered, "adjudged, and decreed that the *claim set forth in said* "*bill*, and in favor of said complainant, be, and hereby "is, recognized as a valid lien against the property de- "scribed in said bill, and that said property be sold," &c. Record, 45.

W. P. Bell was appointed a trustee to sell. He did advertise, and sold the property to Frederick Volk for $2,500. Duncanson has procured the title of this purchaser. That is his defence. He protected himself by covenants of warranty from his grantor.

Assignment of Errors.

I. *The said Court of Appeals erred in holding that the Supreme Court of the District had jurisdiction of the person of this appellant and the infant defendants.*

II. *The said court erred in holding that the said Supreme Court had jurisdiction of the subject-matter.*

III. *The said court erred in holding that the title derived from the sale made under the decree of said Supreme Court was a good title.*

IV. *The said court erred in reversing the decree of the Supreme Court.*

V. *The said court erred in not granting the relief prayed for by the said Frederick L. Manson.*

ARGUMENT.

Jurisdiction of the Infants.

The Court of Appeals erred in holding that the equity court obtained jurisdiction of the infants in the creditor's suit.

It must be conceded that the Supreme Court of the District of Columbia could not acquire jurisdiction of infants beyond its territorial limits by virtue of any inherent powers of a chancery court; and that if jurisdiction was acquired of the infants in this case, it must have been done by virtue of some statute.

We say it was not done by virtue of any statute; that the law of Congress in force authorizing and prescribing a procedure in such cases was not complied with in any particular.

Due process of law, we understand, is had, in suits against non-resident infants, to establish a claim against their real estate, by publication where a substitution of publication for personal service is authorized by statute; and when the record shows that some other mode of obtaining jurisdiction of them has been resorted to, no presumptions will be indulged that the statute was complied with; and that a sale made without such publication is void as to such infants, and the purchaser takes no title.

There was no Publication.

The Revised Statutes of the District of Columbia provide for substitution of publication for service of process as follows:

"Sec. 787. Publication may be substituted for personal "service of process upon any defendant who cannot be

" found, in suits for partition, divorce, by attachment, for " foreclosure of mortgages, and deeds of trust, and for the " enforcement of mechanics' liens and all other liens " against real or personal property, and in all actions at " law or in equity which have for their immediate object " the enforcement or establishment of any lawful right, " claim, or demand to or against any real or personal " property within the jurisdiction of the court.

" SEC. 788. No order for the substitution of publication " for personal service shall be made till a summons for " the defendant shall have been issued and returned ' not " ' to be found.'

" SEC. 789. The order for publication shall be in the " following or equivalent form." The statute then prescribes a form of notice, wherein it is provided that the defendant shall cause his appearance to be entered in the cause " on or before the first rule day occurring *forty days after* " the date of the order.

See R. S., D. C., pp. 93 and 94.

Act of February 22, 1867, ch. 64, sec. 7, vol. 14, p. 403.

No reservation having been made excluding infants, it applies as well to them as to adults.

Bryan *v.* Kennett, 113 U. S., at p. 196.

Ins. Co. *v.* Bangs, 103 U. S. 435.

The Ontario Bank *v.* Strong, 2 Paige, 301.

It is submitted that there is no law in this District authorizing a substitution for personal service of process *upon a non-resident infant, in a creditor's suit*, excepting the above-mentioned act of Congress of February 22, 1867 (R. S. D. C., sec. 787). The case of Ins. Co. *v.* Bangs, 103 U. S. 435, cited by the court below, it is, with great deference, submitted, does not sustain a contrary view. *It holds that an infant, being absent from the jurisdiction, could not be personally served, and that a decree against him, in a matter of personal contract, is void although a*

guardian ad litem was appointed and service was made on his general guardian. A law authorizing substituted service by publication against non-residents, in cases involving a claim on real or personal property, is recognized as valid in that case; but it does not, it is submitted, recognize the proposition that jurisdiction of non-resident infants can be acquired in this District, in any case, otherwise than by a publication in strict accordance with the statute.

In that case it is expressly stated that—

"Substituted service by publication, against non-
" resident or absent parties, allowed in some States in
" purely personal actions, is not permitted in the Federal
" courts. Such service can only be resorted to where
" some claim or lien upon real or personal property
" is sought to be enforced, and the decision of the court
" will then only affect property of the party within the
" District."

Jurisdiction cannot be acquired of non-resident infants *through a commission*, in a creditor's suit. The case of Snowden *v.* Snowden, 1 Bld. Ch. 550, referred to in the opinion of the court below, was a *suit for partition.* The statute of Maryland provided for a commission in suits for partition, but not in creditor's suits.

The record of the creditor's suit shows that the infant defendants were beyond the jurisdiction of the court. The bill avers (p. 8) that the complainant "is a citizen of
" Philadelphia, in the State of Pennsylvania, * * * and
" that the defendants are citizens of the same place."
Summons was issued and returned "Not to be found"
(39). An order for a commission to three persons at Philadelphia to *appoint a guardian ad litem* to take the answer of Cecilia Manson, and for a commission to three persons at Kerrville, Texas, to *appoint a guardian ad*

litem to take the answer of the defendant Frederick L. Manson, was issued by the court (39). Commissions were thereupon issued to appoint *guardians* to said infants, respectively. A *guardian* was appointed to answer for Cecilia, and his answer is appended to the commission (40). The commission to Kerrville, Texas, was returned unexecuted (41). Whereupon an order was made appointing a commission at Fort *Clark*, Texas, to appoint a *guardian* for Frederick L. Manson, a minor defendant, and by said guardian take the answer of said infant defendant in this cause; and the answer of the guardian so appointed is appended to the commission issued under that order (43). There was no publication, no order for publication, and the decree of sale does not show that the court, in any manner, acquired jurisdiction of the infants, but assumes jurisdiction of them by virtue solely of the above commissions.

We understand that where infants are made parties defendant to a suit to establish a claim against property, they must be personally served with process if within the jurisdiction of the court, and, if they are non-resident, that publication can be substituted for personal service where such substitution is authorized by statute; and that, where the record shows a resort to an unauthorized method, the proceeding is of no validity, so far as the infant is concerned. Galpin *v.* Page, 18 Wall. 350.

The proceedings under the commissions in the creditor's suit were without authority of law. There are ancient statutes of Maryland which authorize suits by creditors of decedents to subject real estate which *has descended from* them, or which has been *devised by them*, to the payment of their debts; and they provide a method of proceeding as to non-resident infants, in three several enactments: First, when the infant resides within the

State. Second, when the infant resides out of the State but within the United States. Third, when the infant resides out of the State and out of the United States.

These statutes of Maryland contemplate the existence of *guardians* to infants and the service of such *notice upon the guardian* as the court may direct. But none of these statutes provide for the appointment of a committee for the taking of an infant's answer. Such a proceeding is authorized by the Maryland statute, as before remarked, *only in proceedings for partition.* Snowden *v.* Snowden, 1 Bland, 550 and notes.

It is possible that the confusion which appears in the above orders and commissions, between the offices of "guardian" and "guardian ad litem," may have grown out of the failure to distinguish between the procedure in creditor's suits and partition suits. And the orders and commissions show, not that they were issued *as notice to a guardian under the statutes providing for proceedings in creditor's suits,* but for the appointment of guardians *ad litem* as if proceeding in a partition suit.

But it is submitted that not only were technical requirements disregarded in proceeding against the infants, but the spirit of the law as it has always existed in respect to the substantial protection of infants' property was also disregarded; for the record shows that the proceedings were practically *ex parte;* that they were conducted wholly by the complainant and his solicitors, and that the only supposed appearance of the infants in the case is by a non-resident guardian appointed by non-resident commissions, at the instance of the plaintiff in the case and his attorneys.

In Daniell's Chancery Practice it is said that "Any appearance entered at the instance of the plaintiff for a defendant, who at the time of the entry thereof is an

" infant, or a person of weak or unsound mind, unable of " himself to defend the suit, is irregular and of no validity." 1 Dan'l Ch. Pl. and Pr. 476.

Citing Leese *v.* Knight, 8 Jur. N. S. 1006, part 1, 10 W. R. 711, V. C. K.

In Knickerbocker *v.* DeFreest, 2 Paige, 304, it was held that the court will not appoint a person guardian *ad litem* on the nomination of the plaintiff. In that case the court said: "It is frequently necessary for the guardian seri- " ously to contest the complainant's claim. * * * " And if a special answer is necessary, or advisable, for " the purpose of bringing the rights of the infant properly " before the court, it is his duty to put in such an answer. " * * * If the infant has any substantial rights which " may be injuriously affected by the proceedings in the " cause, or if the claim against him is of a doutful char- " acter, it is also the duty of the guardian to attend, be- " fore the court on the hearing, on the taking of testimony " in the cause;" "*and he may be punished for his neglect.*"

A person resident out of the jurisdiction cannot be a guardian *ad litem*, as he cannot be served with process to compel obedience to the decrees of the court. See Lady Hartley *v.* Atcherly, 7 Beav. 53.

It has also been held that a decree cannot be made by consent of an infant without an inquiry whether it is for his benefit. See Dow *v.* Jewell, 21 N. H. 486. Neither a default nor a decree *pro confesso* can be taken against an infant. Enos *v.* Cópps, 12 Ill. 255. And this court, in Bank *v.* Ritchie, 8 Pet. 128, where a guardian *ad litem* admitted the averments of a creditor's bill, condemned the act and vacated the purchase.

A decree cannot be entered against an infant without proof to sustain the case. Hamilton *v.* Gillman, 12 Ill. 260.

In the case at bar, the decree was made upon the bill, the answers of the defendants, and the report of the auditor of the orphans' court of Philadelphia *filed as an exhibit to the bill* (p. 31). That report was not even *offered as testimony;* and if it had been, it would not have been evidence. Public Works *v.* Columbian College, 17 Wall. 527.

On a bill in the nature of a bill of review there can be no doubt of the right of infant defendants to impeach a decree, under which their real estate has been sold, upon making proper allegations of fraud or non-observance of the requirements prescribed by the statute to confer jurisdiction to pass the decree, or any matter that clearly showed that an improper decree had been made against them though not obtained by fraud, collusion, or surprise.

Gregory *v.* Levering, 54 Md. 52, 55.

Kitryman *v.* Pitesell, 3 H. & J. 78.

The Supreme Court of the District had no jurisdiction over the subject-matter.

We concede that in certain States a creditor may proceed against the heirs-at-law, to sell real estate, for payment of his debt, that has descended to the heirs.

But this can be done only where there is a statute authorizing it. It is a proceeding wholly unknown to the common law.

At common law real estate descends to the heir without liability for the debts of the ancestor.

Whether a creditor can go outside of his own State and that of the heir and seize and sell real estate outside of either State on the payment of his debt has never been decided, so far as we know.

That is this case.

It is well settled that when the creditor does proceed

against the heir, he must *strictly* follow all the provisions of the statutes.

"This remedy of the creditors," says Bingham, "is one "which depends *entirely upon the statutory provisions of* "*the several States.*"

Bingham Descents, 250.

"It is a proceeding given by statute in derogation of "the common-law rights of the heir and *must be pursued* "*in the strictest manner and in every particular.*"

Do. 292.

"In view of all the authorities upon the subject, it is "undoubtedly the rule that the estate of the ancestor who "has died intestate is vested in his heirs immediately "upon his decease and that his creditors have no estate "therein or lien thereupon until sale has been made and "perfected by his administrators or executors by pro- "ceedings taken strictly according to the directions pre- "scribed by the statute."

Do. 271.

"On the death of the ancestor the land owned by him "descends to his heirs. But how do they hold it? "They hold it subject to the payment of the debts of the "deceased in those States where it is liable to such debt."

Watkins *v.* Holman, 16 Pet. 62.

Let us proceed to inquire whether the statute was strictly followed in the proceedings in the Supreme Court.

In the first place, *there must be a debt of the ancestor, and one that existed in his lifetime.*

In Farrar *v.* Dean (24 Mo. 16), the court said: "It is "*beyond doubt* that the debts to be paid by the sale of "the real estate of the deceased person were debts and "liabilities of that person only—debts due or to become "due by him."

The court held that a sale made under the order of the probate court to defray the expense and costs of administration was illegal and *void.*

In Fitch *v.* Wittecock (2 Barb. Ch. 163), the chancellor said: "The return also states that it appeared from the "proofs that their claim was for the amount allowed "them upon the final settlement of their accounts for "disbursements, expenses, and commissions in the ad- "ministration of the estate, and for the surrogate's fees "and charges upon the final settlement of their accounts "as administrators. It is evident, therefore, that no part "of the $156, for the payment of which the order of sale "was made, was *a debt from or owing by the defendant.*"

To the same effect are Walker *v.* Dicke, 79 Ills. 473, and Carey *v.* Dennis, 13 Maryland, 1.

The bill on which the land in this controversy was sold alleges that "Your complainant has paid out of his own "funds on said account, over and above assets coming "into his hands, the sum of $2,051.26, which amount is "justly due him, and there remain no funds from which "to reimburse him," &c.

This was not a debt incurred by the decedent in her lifetime. There was no privity between the decedent and the complainant. He had no right to purchase claims against the estate and then ask to be subrogated to the rights of the original parties.

One who pays a debt which he is not personally bound to pay, and which is not a charge upon his property, is not entitled to be subrogated to a lien which the creditor had upon the estate of the debtor. Wilkins *v.* Harper, 1 Comstock 586.

The character of the alleged claim on the estate to Wm. L. Manson is fully set out in the bill. It was therefore before the court. It showed that it was not a debt at all,

such a debt as would authorize the sale of the infants' real estate. It did not even allege that it was a *debt* against the estate.

He says in his bill (par. 4) that he settled the estate of decedent, "and the personal estate of the said decedent "has been fully and finally administered, and the same "would have proved insufficient and inadequate *to pay* "*the debts of the estate*, but your complainant made ad- "vances out of his own funds to pay the indebtedness of "said estate in full, and the said advances together with "assets of the estate paid in full all the just claims filed "and proven against said decedent, and your complainant "has paid out of his own funds on said account, over and "above assets coming into his hands, the sum of $2,051.26." And an examination of the auditor's account, filed with the bill, shows that the $2,051.26 is made up of items including administration commissions, $529; counsel fees, $800; auditor's fee, $250, and $960, two years and eight months' interest on a mortgage which had been allowed to accumulate after the decease of the decedent in September, 1870, until July, 1873. (38.)

These four items alone (356) aggregate $2,539. It thus appears on the face of the record that the decedent, at the time of her death, did not owe one cent of the claim set up in this bill. Nor does the decree recite a fact inconsistent with this showing. It states the fact that the "cause came on to be heard upon the pleadings and a "certified copy of the confirmed report of the auditor." Surely this does not in itself show a finding of any fact of indebtedness *other than the facts appearing in the papers referred to.* The subsequent *recognition* of the "claim set forth in said bill," as a lien against the property, was in excess of jurisdiction unless *the fact of indebtedness appeared.* And it certainly did not appear, either by allegation or proof.

Moreover, a critical examination of the auditor's report shows that the *principal* of the debt of $6,000 on which the $960 interest was paid was a bond and mortgage given by Manson himself, Mrs. Manson joining as his wife—a joint debt at best, in which case Manson could not reimburse himself (34). That proceeding, also, was *ex parte*. And the subsequent proceeding to collect the $2,051.26 years after this sale had been made—a proceeding conducted by McLaughlin, who was familiar with the condition of the estate and with all its details—was characteristic of the manipulation to which the whole estate had been subjected. (112.)

To give an equity court jurisdiction over a decedent's estate it must appear that there was an undisputed debt. See—

Public Works *v.* Columbian College, 17 Wall. 527.
Ins. Co. *v.* Bangs, 103 U. S. 435.

A judgment against an administrator is not even *prima facie* evidence in a proceeding to sell decedent's real estate to pay creditors.

Birely *v.* Staley, 5 G. and J. 432–3.

To pay off this heterogeneous mass, he advanced, *sua sponte*, $2,051.26 out of his own pocket, and now it is claimed that this sum was a *debt* of the estate and that he was a *creditor*. What right had he to step in and pay this money? He was in no manner liable for it and never had been. His property was in no manner bound by it.

Although the law gives to a debtor the privilege of procuring another to be substituted in the place of the creditor, who is then bound to receive the debt due, subrogation does not in such a case take place by operation of law.

Dixon Sub. 167.

A party who furnishes money for the payment of a debt does not acquire the rights of a creditor who is thus paid. The legal claim belongs not to any one who may pay a debt, but only to him who, *being bound for it*, discharges it. A stranger who pays a debt, if he shows no conventional subrogation, cannot claim the benefit of legal subrogation. (Do. 167.)

On a loan of money to pay off an existing debt to another creditor, it depends upon the agreement whether the lender is to be substituted to a former debt and its securities. There is no equity between the parties as in case of suretyship from which a legal right to substitution could result. (Do. 168.)

We think it must be conceded that the creditor's bill to sell the real estate of the heir at law must show a *debt* and one that is *valid*. Suppose it show that the claim is founded on a wager on a horse race. Would a decree finding such a claim a valid debt against the estate be of any force or virtue? Suppose that it showed a debt that was barred by the statute of limitations, and that, too, in a State where an administrator was required by statute or the decision of the highest court in the State to make that defence. Would that be a *debt*, and would a decree finding it such be of any virtue? No, because upon the face of the pleading it would show a claim which was not and could not be a *valid debt;* and if no valid debt, no relief, no sale.

Again. *The bill of Manson for a sale showed that the court had no jurisdiction of the subject-matter, because it showed that Sarah J. Manson, the decedent, had no interest in the realty at the time the bill was filed. She had had a life estate only and she was then dead.*

The bill sets out with the statement that Manson, the complainant, is a citizen of Philadelphia, Pennsylvania,

and sues in his own right as creditor of the late Sarah M. J. Manson, his wife; that the defendants are citizens of the same place; that Poulson is sued as trustee, and that Frederick L. Manson, William H. Walters, and Cecilia M. J. Manson, are sued as heirs at law of the said Sarah J. Manson being her only surviving children; that the said Sarah died intestate as to her real estate in the city of Washington, and at the time of her decease was seised of the hereinafter-described realty, in her own right, to and for her sole and separate use, freed and discharged from any claim, right, title, or interest of her husband, as will more fully appear by reference to three certain deeds. The deeds are fully described by giving the dates of each, the grantor or grantors and grantee in each, and the pages in the land records of the District of Columbia, where each deed is recorded. The bill then makes the record of said deeds a part and parcel of the bill in the following words: "*And the said deeds as recorded are prayed to be* "*taken as part of this bill.*" Then the lands are described.

Now, if we stop without looking at the deeds and give a construction to the bill so far, we find that it *alleges seisin—that is, possession—and nothing more, at her death*, for her sole use, without the interference of her husband. Seisin—"In the common law signifies possession" (3 Tomlin Law Dictionary, 446.)

Right here we desire to call the attention of the court to the vital misapprehension of the Court of Appeals upon this point. It said: "Now it is certainly true that "the Supreme Court of this District has jurisdiction and "power to decree the sale of the real estate of a deceased "debtor, whether the title be legal or equitable, for the "payment of debts; and *upon the allegation that the de-* "*ceased was seized, either legally or equitably, and died*

"*indebted, there would be furnished a foundation for a* "*decree of sale of such real estate for the payment of the* "*debts.*" Record, 139.

It acted upon this construction and held that the allegations of this bill as to seisin were sufficient to show a title in the children which could be sold to pay the debts of their mother.

The allegation of this bill is that she was *rightfully in possession when she died.* That is all. Does that fact show that, after her death, she or her estate had *any* interest in the land?

Assuredly it does not. The law requires that the petitioner shall describe the exact interest which he is seeking to have sold. He did it, in this case, by making the deeds, which do show the exact interest, a part of this bill. When we look into these deeds, we find that Sarah Jane Manson had but an equitable life estate, *with the power left in her to dispose of the property by sale or mortgage, or by any deed, or instrument of writing, or by her last will and testament under her hand and seal,* and if none of these things were done by her, then the property was to go to her children, or such as should survive her.

The important question arises, did she dispose of the property in controversy, by sale, or mortgage, or instrument in writing, or by her last will and testament under hand and seal in her lifetime?

If she did not, then it must be admitted that the property passed by purchase, and not by descent, to her children, now represented by this appellant, Frederick L. Manson.

Foos *v.* Scharf, 50 Md. 310.

To make the property assets, the power must have been executed by Mrs. Manson.

2 Sug. Powers, 27; 4 Kent, 339.

Brandes *v.* Cochran, 112 U. S. 352.
Clapp *v.* Ingraham, 126 Mass. 200.

There is no pretence that it was ever executed. The only thing claimed is the execution of the will in Pennsylvania, with two witnesses, in which she devised her real estate to her husband for his life, without any reference to the property now in controversy.

This is not an execution of the power. How can it be, when the provisions of the statute in reference to wills are taken into account? That statute provides as follows: All wills shall "be attested and subscribed in the presence "of the said devisor by three or more credible witnesses, "*or else they shall be utterly void and of none effect.*"

Sec. 4, Act of March 20, 1799.

If they are "utterly void and of none effect," they cannot be the foundation of any legal right.

Courts of equity sometimes may help out a defective execution of a power, but never unless the execution is of such a character as can be perfected.

A will with only two witnesses cannot be helped out and made potential by any court, in view of the express provisions of the statute hereinbefore quoted.

A court of equity will never help out a defective execution of a power unless it appears that it was the *clear intention of the party to execute the power.*

There was no such intention in this case, for the reason that there was *no mention of it in the will.*

It devised "all of my real estate" to the husband. She owned other real estate in Philadelphia (Record, 32, 88). There was then something for the will to operate upon, without including this property, and in such a case the rule is thoroughly settled that a general disposition

by will *does not include property over which the party had only a power.*

Kent says:

"In Sloane *v.* Cadagan (Sugden Powers, 282), it was "declared by the master of the rolls to be settled that a "general disposition by will would not include property "over which the party had only a power, unless an inten- "tion to execute the power could be inferred. A will "need not contain express evidence of an intention to "execute a power. If the will be made without any ref- "erence to the power, it operates as an appointment "under the power, provided it *cannot have operation with- "out the power.* The intent must be so clear that no "other reasonable intent can be imputed to the will; and "if the will does not refer to a power or the subject of it, "and if the words of the will may be satisfied without "supposing an intention to execute the power, then un- "less the intent to execute the power be clearly expressed "it is no execution of it."

4 Kent, 13th Ed., 335. Numerous authorities, English and American, are cited in support of the text.

These considerations lead us to the conclusion that this will has no significance in this case and should be excluded from its consideration, and that the case *should be decided as though there had been no attempt to make a will.*

It follows that, after the death of Sarah J. Manson, *her estate had no interest in this proyerty and nothing that could be sold to pay her debts.* At her death title was vested in the heirs by operation of law. Perry Trusts, 355.

Kennon *v.* Stewart, 93 U. S. 160.
Clark *v.* Stanley, 48 Md. 353.

What, then, is the effect of the sale that was made? It was utterly void. The court had nothing before it sub-

ject to sale and was therefore without jurisdiction of the subject-matter and without any authority to direct a sale, and the purchaser at the sale took no title, and the decree under which he claims to have purchased may be attacked collaterally.

We think that the decisions of this court, already made, are conclusive upon all these questions.

We will call the attention of the court to some of them.

Shriver's Lessee *v.* Lynn, 2 How. 43. The case was this: One Z. Magruder, being seized in fee of a plantation called George's Adventure, containing some 456 acres, devised 356 acres to be sold after the death of his wife, the proceeds to be divided among his six children. He also devised 100 acres, to be laid off of said George's Adventure, to his brother Elias for life, and if said Elias should have certain heirs, then to him, his heirs and assigns forever; but in default of such heir said 100 acres to be sold and the proceeds to be divided among the said children of the devisor.

Upon a petition after the death of the wife "*to sell all* "*the property devised to be sold by the will*, and for such "other and further relief," &c., the chancellor decreed "*that the real estate directed in the said will to be sold* "*shall be sold*," and appointed a trustee for the purpose. Afterwards the trustee reported that he "had sold the real "estate in the said will and decree mentioned," and that "the 100 acres, part of the said tract devised to be sold "in case Elias Magruder should die without heirs, as ex- "pressed in the will, still remains unsold." The sale was ratified. Some years afterwards, Elias having died, the trustee, *without any further order of the court*, sold the 100 acres and made a second report, stating that he "had "sold the remaining part of the real estate of Zachariah "Magruder, deceased, consisting of 100 acres," &c. This

sale also was ratified and a deed made to one Slicer, the purchaser. Ejectment having been brought by parties (claiming through Slicer), the Supreme Court of the United States was of opinion that, Elias being alive at the time of the first sale, and the event (having lawful children) upon which the estate might vest in his heirs being yet possible, *the land was not at that time subject to sale, and that to construe the decree to sell, as embracing the* 100 *acres, would go beyond the jurisdiction of the court.* The court said: "At the time the decree was entered that tract " was no more subject to the power of the court than any " other tract in the country."

" If a want of jurisdiction appear on the face of the " record the judgment or decree will be a nullity."

The court, referring to the subsequent sale of the 100 acres, also said: " The sale being without authority, the " ratification of it by the court must be considered as " having been given inadvertently. If given deliberately " and on full examination of all the facts, still it must be " regarded as an unauthorized proceeding. There was no " case before the court—nothing on which its judgment " could rest. No court, however great may be its dignity, " can arrogate to itself the power of disposing of real " estate without the forms of law," &c. (2 H., p. 60.)

So in the case at bar. *At the time the decree was entered the land was no more subject to the power of the court than any other tract in the District.*

Williamson *v.* Berry, 8 How. 495. This was ejectment and brought into question the effect of a sale under an act of the legislature which provided that no sale of any part of the estate shall be made by Clarke until he shall have procured the assent of the chancellor to such sale,

who shall, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he shall think proper, shall be vested in Clarke as trustee.

A sale was ordered and made with the assent of the chancellor, and the chancellor directed that the proceeds of the sale might be retained by Clarke and applied on his claim.

The question made was that the chancellor had no right to direct any sale the proceeds of which should be applied on the debt of Clarke.

There had been a regular petition filed with the chancellor asking for his authority to sell and invest.

This court held that the chancellor had authority to order and approve of a sale, but that it must be for cash, and so much of his order as allowed the proceeds of the sale to be applied on the private debt of Clarke was *beyond his jurisdiction*, and that the sale and deed were void, and could be attacked collaterally.

The court, among other things, said:

"But it is an equally well-settled rule in jurisprudence "that the jurisdiction exercising authority over a subject "may be inquired into in any other court, when the pro- "ceedings in the former are relied upon and brought be- "fore the latter by a party claiming the benefit of such "proceedings. The rule prevails whether the decree or "judgment has been given in a court of admiralty, "chancery, ecclesiastical court, or court of common law, "or whether the point ruled has arisen under the laws of "nations, the practice in chancery, or the municipal laws "of States. (540.)

"The operation of every judgment depends upon the "jurisdiction of the court to render it. Though there "may be jurisdiction for certain purposes in a cause, *that* "*jurisdiction may be exceeded in the judgment.*" (543.)

This rule applies to our case. The court had jurisdiction to inquire whether there was any estate of Mrs. Manson that could be sold, but when it turned out that there was no such estate, then its order to sell the premises in controversy was beyond its jurisdiction and in excess of its jurisdiction and void.

In Thompson *v.* Whitman (18 Wall, 457), the court held that want of jurisdiction may be shown either as to subject-matter or the person, or in proceedings *in rem* as to the thing, and that a judgment may be contradicted as to the facts necessary to give the court jurisdiction, and that such facts did not exist, and that the record will be a nullity, notwithstanding it may recite that they did exist.

In Day *v.* Micou (18 Wall. 156), a libel of information was filed in 1865, under the confiscation laws, against two squares of ground, property of J. P. Benjamin. Prior thereto, in 1858, he had mortgaged the ground to Micou. Publication was made by which all persons interested in the property were required to appear February 15, 1865, to show cause "why said property and real estate and the "right, title, and interest therein of the said J. P. Benjamin "should not be condemned and sold according to law." The decretal order of condemnation described the property as belonging to J. P. Benjamin. The property was sold and a deed made to Madison Day. In 1868 Micou proceeded against Benjamin and Day to foreclose. Benjamin made no opposition. Day claimed as owner in fee discharged of all liens; held that only the life estate of Benjamin and "nothing more was within the jurisdiction or judicial power of the district court." * * * "In admiralty cases and in revenue cases a condemnation and sale generally passed the entire title to the property condemned and sold. This is because the thing condemned is considered as the offender or the debtor and is

seized in entirety. But such is not the case in many proceedings which are *in rem*. Decrees of courts of probate or orphans' courts directing sales for the payment of a decedent's debts or for distribution are proceedings *in rem*. So are sales under attachments or proceedings to foreclose a mortgage *quasi* proceeding *in rem* at least. *But in none of these cases is anything more sold than the estate of the decedent or of the debtor or the mortgagor in the thing sold. The interests of others are not cut off or affected. If, then, as we hold, the property and estate of J. P. Benjamin was all that was seized or all that could be seized or condemned in these confiscation proceedings, those who held other interests in the land were not bound to come in and assert their claims. Their interests did not pass to the purchaser at the sale, and they remained unaffected by the decree of condemnation and the sale thereunder.*"

It seems to us that the principle here decided is applicable to our case. The court held that all that could be sold was the interest of the defendant. So in this case all that could be sold under the decree was the interest of Mrs. Manson in the premises, and as she had no interest there was nothing that could be sold, and the purchaser *who bought nothing is entitled to nothing.*

In Waples *v.* The United States, 110 U. S. 630, the plaintiff purchased certain lots in New Orleans which had been condemned and sold under confiscation proceedings. It turned out that the defendant in the confiscation proceedings had no interest in the property at the time of the seizure and condemnation.

The plaintiff sought to recover back the purchase money, but this court held that he had notice of the character and legal effect of the decree of condemnation when he purchased and was, therefore, presumed to have

known that if the alleged offender possessed no estate in the premises at the time of their seizure *nothing passed to the United States or to him by his purchase.*

In Noble *v.* Union River Co., 147 U. S. 173, this court said:

"It is true that in every proceeding of a judicial nature "there are one or more facts which are strictly jurisdic- "tional, the existence of which is necessary to the validity "of the proceedings, and without which the act of the "court is a mere nullity; such, for example, as * * * "the seizure and possession of the *res* within the bailiwick "in a proceeding *in rem;* * * * a publication in "strict accordance with the statute, where the property "of an absent defendant is sought to be charged. * * * "So, if the court appoint an administrator of the estate "of a living person, * * * or condemns as lawful "prize a vessel that was never captured; * * * or "the land department issues a patent for land which has "already been reserved or granted to another person, the "act is not voidable merely, but void. In these and "similar cases the action of the court or officer fails for "want of jurisdiction over the person or subject-matter. "The proceeding is a nullity and its invalidity may be "shown in a collateral proceeding."

What difference is there between a case where the land department issues a patent for land that has been reserved or already patented, and the present case?

In each case there is nothing for the patent or decree to operate upon. There is no land, and an attempt to dispose of something that does not exist must be wholly void.

Let us suppose a case. We will suppose that William L. Manson had filed a petition in the Supreme Court of the District to sell this lot 15 now in controversy to pay the debts of his wife and had made her heirs at law de-

fendants and had alleged that the only interest the wife ever had in the premises was a life estate, which had terminated by her death. He nevertheless prayed that the premises might be sold to pay his debt, which debt he had set forth in proper form in his petition.

We will suppose that the court, taking for granted that the entry prepared for its signature was all right and that there was no opposition to its being made, had signed a decree ordering a sale of the premises and appointing a trustee to sell, and that the trustee did sell and report the sale to the court, and it confirmed the same, and a deed was made to the purchaser; will any lawyer contend that the purchaser obtained a good title? When the present case is carefully analyzed it will be found that the supposed case is stronger and better than the present, because the debt is in it properly alleged.

We conclude this branch of the case with the remark that it is to be distinguished from those cited on the other side, from the fact that in those cases the record was silent as to some matters which the court must have found to exist, or it could not have rendered the judgments which it did, whereas in our case *everything appears in the record and nothing is left for presumption.*

Laches.

The doctrine of laches has been so often considered by this court, and the rules which govern it are so well settled, that it seems idle to review them now.

There is no fixed rule applicable to all cases. Each case depends upon its own peculiar circumstances. Did the party know what the facts were, or could he have ascertained them with reasonable inquiry?

The appellant was a young man, under age, in the reg-

ular army of the United States, located in the State of Texas. After the death of his father, he wrote to a lawyer in Philadelphia, making inquiry concerning property there which he knew his mother had owned in her lifetime and the father had collected rents, and was informed, in reply, that it was all sold.

After the death of his father, his stepmother wrote him to the same effect.

He testifies that he never knew of the property in this city, nor the existence of the deeds under which he became one of the owners of it on the death of his mother. When spoken to by his captain, who was one of the commissioners to appoint his guardian, concerning the letter of McLaughin about selling property in which he was interested, he was not informed where the property was located. It is fair to presume that he understood it to be property in Philadelphia, where the letter was written and where McLaughlin lived, and where he knew his mother had owned property in her lifetime.

He was not advised to the contrary by the letter from Bell, the Washington attorney. He never supposed that there was or had been a proceeding to sell property, to pay debts of his mother, of which he was a part owner.

He was advised by letter of Birney & Birney of August 5, 1891, that he was an heir to some property in Washington. In his answer he inquired what made them think he was an heir. (Record, 53.)

But suppose he had known and had come to Washington to make inquiry and ascertain what his legal rights were? Of what avail would it have been? He would have been obliged to consult some attorney, learned in the law. Suppose he had employed the able Chief Justice Bingham. He would have told him that the property still belonged to him. Suppose that, not being fully satisfied,

he had gone further and employed the learned Chief Justice Alvy. He would have advised him that his interest had all been sold, and that there was nothing for him.

So that he would have been utterly unable to decide what he ought to do.

But there is another consideration which seems to us is conclusive upon this question of *laches*. At common law he had twenty years in which to bring his action of ejectment for this property, and had not Congress stepped in and authorized it to be condemned for a public use, he could have brought his suit within twenty years.

Now, shall he suffer because, *nolens volens*, he has been cut off from his remedy by legislative action? We have no hesitation in answering in the negative.

The court below was of opinion that judicial sales should be sustained, and every reasonable intendment indulged in to uphold them.

It said: "It is certainly the policy of the law to main-
" tain judicial sales, and every reasonable intendment
" should be indulged to uphold them. Otherwise the
" public would become distrustful, and fair prices for
" property sold under judicial authority would seldom be
" obtained.

" Purchasers, while they are required to take notice of
" the existence and terms of the decrees or judgments
" under which they purchase, and as to the parties bound
" thereby, they cannot be required to become judicial
" critics and to pass in review, at their peril, upon the
" correctness of the proceedings upon which the judg-
" ments or decrees may be founded." Record, 140.

But they purchase at their peril at all judicial sales. *Caveat emptor* has always been the rule at such sales. As this court said in Waples *v.* The United States, *supra:*

"The plaintiff had notice of the character and *legal* "*effect* of the decree of condemnatian when he purchased, "and is therefore presumed to have known that if the "offender possessed no estate in the premises at the time "of their seizure, nothing passed to the United States "by the decree or to him by his purchase."

So in this case. The purchaser had full notice of the "character and legal effect" of the decree, for all the facts were spread out in the record and he was therefore presumed to have known that Mrs. Manson had no estate in the premises that was subject to sale, and that if he purchased he did so at his peril. He, like all other purchasers at judicial sales, took the risk upon himself.

If he made a mistake as to the law, he did what a great many others have done and been without remedy.

The brother and sister of appellant are presumed to have been dead when this suit was commenced.

In August, 1891, this appellant was informed of his interest in the premises. He made three visits to Philadelphia and Andalusia, Penn., where he had resided with his parents up to the time of his enlistment, and made a most thorough search and inquiry for his sister and half brother in the neighborhood where they had resided, and among their associates and acquaintances, and could find no trace of them. He also advertised in several newspapers for his sister, without result. The last he heard from her was by letter in 1876 (Record, 56), and he testifies that as a result of his inquiries he believes that his sister and half brother are dead (Record, 56).

The testimony of McLaughlin tends to corroborate appellant, for he testified on cross-examination that he had not seen Cecilia since 1880 (Record, 66).

And it is worthy of remark that nothing has been heard of either of them during the six years that this suit has been pending.

It is submitted that the presumption raised by the common law that they are dead, not having been heard of for more than seven years before the commencement of this suit, is fully justified for all the purposes of this case.

The evidence shows that the search was a most thorough one, and was wholly fruitless. Any attempt to make them parties would have been idle. Poulson would not have been either a proper or necessary party, for the trust which he once held had been extinguished not only by the condemnation of the premises for a public use, but by the death of the tenant for life.

Perry Trusts, 353.
Kennon *v.* Stewart, 93 U. S. 160.
Clark *v.* Stansbury, 48 Md. 353.

This appellant, while an infant, had a perfect title in this property. He has been deprived of it without his consent, without compensation, and without right. He looks to this court to reach out its strong arm and restore it to him by reversing the decree of the Court of Appeals and affirming that of the Supreme Court of the District. Will it do it? We shall see.

Respectfully submitted.

WALTER H. SMITH,
CHARLES H. ARMS,
Solicitors for Appellant.

Nov. 28, 1896.

166-53

Office Supreme Court, U. S.
FILED.
JAN 6 1897
JAMES H. McKENNEY,
CLERK.

166-53

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 127.

FREDERICK L. MANSON, APPELLANT,

vs.

CHARLES C. DUNCANSON, APPELLEE.

BRIEF FOR APPELLEE.

HENRY WISE GARNETT,
Solicitor for Appellee.

WM. F. MATTINGLY,
Of Counsel.

LAW REPORTER PRINT.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 127.

FREDERICK L. MANSON, APPELLANT,

vs.

CHARLES C. DUNCANSON, APPELLEE.

BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

James W. Barker was the owner in fee of part of lot 6, in square 323, in the City of Washington, D. C., improved with two three-story brick dwellings, subject to a deed of trust to secure Margaret C. Barker $2,500.

Sarah Jane Manson, wife of William L. Manson, possessing separate estate in her own right, with her husband's consent, entered into a contract with Barker to purchase the property for $11,000, of which $1,500 was to be paid in cash and for the balance she was to give her notes, bearing interest, payable at stated periods during three years, out of her separate estate. On August 2, 1862, Barker and wife and Manson and wife united in a conveyance of the property to William R. Woodward, in fee, in trust to secure the notes for deferred purchase money, out of which the amount due Margaret C. Barker was to be paid; to permit Sarah

Jane Manson to occupy and enjoy the premises and receive the rents thereof for her separate use; and upon full payment of all of said notes to convey said premises upon the trusts and for the purposes declared for the benefit of said Sarah Jane Manson in and by a certain other deed or declaration between the parties, of the same date. (R., 10.)

This was a deed from William L. Mason and Sarah Jane Mason and William R. Woodward to Erastus Poulson, which declares that, after the notes secured by the deed to Woodward have been fully paid, Poulson, his heirs and assigns, shall stand seized of the property upon the following trusts and purposes, to wit:

Trusts and Powers Under Which Mrs. Manson Held the Property.

"In trust for the said Sarah Jane Manson for and during her life, and to permit her to occupy said premises and to receive the rents and profits thereof, for her own sole and separate use, free from the interference of her present or any future husband, and without being liable for his debts or engagements, her receipt alone being a valid discharge for such rents and profits.

"And upon further trust that it shall be lawful for the said Sarah Jane Manson at any time and from time to time during her life to dispose of the said premises either by absolute sale or mortgage thereof, as she may think proper, in which the said party hereto of the third part, his heirs or assigns, shall join, such disposition to be made by deed or deeds to be executed and acknowledged by the said trustees, and by the said Sarah Jane Manson as if she were sole and unmarried. And in default of any such sale or mortgage or so far as the same shall not extend, upon further trust for such person or persons, and for such estate and in such parts, shares and proportions as she, the said Sarah Jane Manson, shall or may, from time to time, by any deed or instrument of writing or by her last will and testament under her hand and seal (and which will she is

hereby authorized to make) limit, direct or appoint, give or devise the same; and in default of any such limitation, direction and appointment, gift or devise, in trust for such child or children as she shall leave surviving her and the issue of any deceased child or children equally, share and share alike, such issue taking his, her or their parent or parent's share; and for default of all such children or issue, then in trust for the right heirs of the said Sarah Jane Manson forever. And it is further declared that all moneys which shall or may be raised by sale or mortgage of the said premises or any part thereof, shall be paid to the said Sarah Jane Manson, and be disposed of as she shall or may think best, her receipt being a valid discharge therefor; and the party paying the same not being bound to see to the application or disposition thereof." (R., 17.)

Sarah Jane Manson having paid off all of said deferred notes out of her separate estate, Woodward, trustee, and Barker, by deed dated August 2, 1865, united in a release to Erastus W. Poulson, trustee, to hold upon the same trusts as set forth in the deed to him of August 2, 1862 (R., 19).

In this deed of August 2, 1865, Sarah Jane Manson and the trustee Poulson, are mentioned as being of the City of Philadelphia.

Sarah Jane Manson died September 4th, 1870, at Andalusia, Bucks Co., Pa., leaving a will dated April 20th, 1865, and probated in Philadelphia, September 12th, 1870, by which, after directing her debts to be paid, she devised all her property to her husband for life, appointing him guardian to her children, and upon his death the property was to be equally divided, share and share alike, between her three children, to wit: Frederick L. Manson, William Henry Walters and Cecilia Mulford Manson, when the youngest of them should reach the age of twenty-one years.

William Henry Walters was her son by a former marriage.

This will was attested by two witnesses only, and hence was insufficient as a will to pass real estate in the District of Columbia (R., 30).

Mrs. Manson during her lifetime had sold one of the houses in this city, leaving the other at the time of her death undisposed of.

On September 12, 1870, letters of administration c. t. a. upon the estate of Sarah Jane Manson, were issued by the register of wills in Philadelphia, to her surviving husband, William L. Manson, who duly qualified.

He advanced a sufficient amount out of his own funds to settle in full the debts of the estate, and upon the settlement of his account as administrator there was found by the court to be due him a balance of $2,051.26 (R., 31 to 38.)

CREDITOR'S BILL IN No. 3796, EQUITY. (R. 27.)

Under Decree in which the Property was Sold.

On June 12, 1874, William L. Manson filed a creditor's bill in the Supreme Court of the District of Columbia, against Erastus Poulson, trustee, Frederick L. Manson, William H. Walters and Cecelia M. Manson, to have part of Lot 6, Sq. 323, sold by decree of court for the payment of the $2,051.26 due him.

The bill avers as follows:

That the defendants are citizens of Philadelphia; that Erastus Poulson is sued as trustee by virtue of two certain deeds hereinafter cited, and the other defendants as heirs at law of Sarah Jane Manson, being her only surviving children. That Sarah Jane Manson died intestate as to her real estate in Washington, and, at the time of her decease, was

seized in her own right to and for her sole and separate use free from any interest of her husband, of the north half of the parcel of land (describing it) conveyed by William R. Woodward to the said defendant Erastus Poulson, on the 2d day of August, 1865, as will more fully appear by reference to three certain deeds, the first from James W. Barker and wife and William L. Manson and wife to Wm. R. Woodward, dated August 2, 1862, the second from said William L. Manson and Sarah M. J. Manson, his wife, to the said Erastus Poulson, trustee, dated the 2d day of August, 1862, and the other from W. R. Woodward and James W. Barker to said Erastus Poulson, trustee, dated the 2d day of August, 1865, and all duly recorded in the land records of Washington County, District of Columbia, the first in Liber J. A. S. No. 219, page 391 et seq., and the second in Liber J. A. S.' No. 226, page 21 et seq., and the said deeds as recorded are prayed to be taken as part of this bill.

That complainant settled the estate of Sarah J. Manson as administrator under letters issued to him in Philadelphia; that the personal estate has been fully administered and would have proved insufficient to pay the debts in full had he not advanced a sufficient amount out of his own funds; that $2,051.26 are justly due him, and there is no fund to reimburse him unless said real estate is sold.

A certified copy of the proceedings of the court in Philadelphia is filed as an exhibit with the bill.

The defendants Frederick L. Manson and Cecilia M. Manson are stated to be infants.

The bill contains the usual prayers, and that guardians ad litem be appointed to appear and defend the interest of each of said infants.

Subpœna was issued against all the defendants, which was returned by the marshal "not to be found."

On July 29th, 1874, the court passed an order appointing

three certain named persons in Philadelphia, commissioners to appoint a guardian ad litem to and take the answer of the infant defendant Cecilia M. Manson; and three other certain named persons at Kerville, Texas, to appoint a guardian ad litem to and take the answer of the infant defendant Frederick L. Manson.

The Philadelphia commission was duly executed and the answer of Cecilia M. Manson by guardian ad litem duly filed, in which she says that she is an infant under the age of twenty-one years, claims such interest in the premises as she is entitled to, submits her said interests to the protection of the court and prays to be hence dismissed with costs. (R. 40.)

The Texas commission was returned unexecuted with the statement that the defendant, Frederick L. Manson, had removed from Kerville, Texas, to the military post of the 4th United States Cavalry, to which he is attached, stationed at Fort Clark, Texas, whereupon the court on November 4th, 1874, passed an order appointing three certain named persons of Fort Clark, Texas, to appoint a guardian ad litem to and take the answer of said infant defendant. This commission was duly executed and the answer of the infant defendant by guardian ad litem duly filed similar in terms to the answer of the other infant defendant. (R. 43–44).

August 14, 1874, the answer of Erastus Poulson, trustee, was filed, in which he admits the facts set out in the bill in reference to the death of said Sarah Jane Manson, and of his being seized of said premises described in said bill as trustee as therein set forth; and admits all the other facts set forth in said bill, submits himself to the orders of the court and prays that he may be hence dismissed with costs. (R. 42).

September 23, 1874, the answer of William H. Walters was filed, in which he says "that he claims such interest in the premises as he is entitled to, and submits his interest to the protection of this Honorable Court, and prays to be hence dismissed with reasonable costs."

DECREE.

On March 19, 1875, the court passed a decree adjudging "that the claim set forth in the bill and in favor of said complainant be, and is hereby, recognized as a valid lien against the property described in said bill," decreed a sale of the property, appointed W. P. Bell trustee to make the sale, "and upon final ratification of the same the said trustee shall convey to the purchaser or purchasers by good and sufficient deed all right, title and interest of said defendants or any of them as of said complainant in and to said property." (R., 45.)

Bell, as trustee, duly qualified by giving the bond required by the decree, and on April 21, 1875, filed his report of sale of the property, pursuant to the decree, to Frederick Volk for $2,500, and that the purchaser had complied with the terms of sale.

On the same day the court passed the order of ratification nisi, followed on May 18, 1875, by the final order of ratification of the sale.

W. P. Bell, trustee under the decree, conveyed the property to Frederick Volk, the purchaser, who subsequently conveyed to Louis, Edward and Alexander Schmid, who by deed dated June 21, 1890, conveyed to the defendant Charles C. Duncanson.

On October 23, 1890, the United States instituted proceedings in the court below, being cause No. 361, District Court, for the condemnation of said square 323 for a postoffice site, the parcel of land in controversy herein being designated in that proceeding as Parcel No. 15.

The square was condemned and the value of this parcel, $17,000, paid into the registry of the court on October 9, 1891.

EQUITX CAUSE No. 14,017.

From Decree in which this Appeal was Taken.

On June 20, 1892, Frederick L. Manson filed a bill in equity in the court below against said Charles C. Duncanson, setting forth the facts in substance as above stated, and averring that upon the death of their mother, Sarah Jane Manson, his said sister, half brother and himself became and were the owners by purchase of said parcel of land. That there is nothing set forth in the bill in said Equity Cause No. 3796 to give said court jurisdiction of the subject matter thereof, or of any matter or person mentioned therein, and that said court had no jurisdiction to entertain said bill of complaint.

That in April, 1873, while a minor under twenty-one, he enlisted in the 4th U. S. cavalry. That he remained in the army until his discharge in 1881. During all this time he was stationed at military posts in Texas and Kansas, and since his discharge has resided in Illinois and Kansas. Avers that he had no knowledge of said equity proceedings in No. 3796, nor of his answer therein by guardian ad litem, nor of said real estate or of his interest therein, until August 15, 1891. That after the death of his father in 1877 he wrote to a lawyer in Philadelphia inquiring as to the disposition of the property in Pennsylvania, and was advised by him that it had all been sold. That the last he heard

directly from his sister was by a letter from her dated in Philadelphia in 1878. That since he learned of the property interests in question he has twice been to Philadelphia and made diligent inquiry for both his sister and brother, and has been unable to obtain any information of their whereabouts or of the existence of his sister since 1880, or of his brother for several years prior thereto, and believes that they are dead; and avers upon information and belief that they are both long since dead, and that they died intestate, leaving him their only next of kin and sole heir at law.

He claims that he is entitled to the fund deposited in the registry of the court, and prays that the decree in cause No. 3796 may be adjudged null and void for want of jurisdiction in the court, both of subject matter and parties; that the deed from Bell, trustee, and all other deeds deraigning title therefrom or under or by virtue of said proceedings in Equity No. 3796 may be decreed void; and that he may be decreed to be entitled to the money in the registry of the court.

DUNCANSON'S ANSWER. (R., 24.)

The defendant, in his answer, avers that the court in said Equity Cause No. 3796, having before it all the parties in interest by due process of law, and having jurisdiction of the subject-matter, had full jurisdiction and power to pass the decree passed by it, and asks that he may have the same benefit as if he had demurred.

That the property was improved at the time of the sale by Bell, as trustee; has remained improved ever since; and has been in the open, notorious adverse possession of the owners under the said several conveyances to them.

From the record in No. 3796, relative to the appointment of a guardian ad litem to complainant, he believes and avers that his statement as to when he was first informed of said equity proceedings was and is absolutely untrue and false.

Avers that it would be inequitable and unjust to allow complainant not only to wait fourteen years after the death of William L. Manson, who could have testified to complainant's knowledge of said equity cause and the sale of the property thereunder, but sixteen years after the sale of the real estate, before setting up any claim or title thereto, or making any attack upon said equity proceeding; and avers that complainant has been guilty of laches, and on that account is not entitled to relief.

In reply to the allegations of the 11th paragraph of the bill, relative to his brother and sister and their supposed death, etc., defendant alleges that he has no personal knowledge, but if the same shall be considered material requires strict proof. Defendant prays that he may have the same benefit as if he had demurred to the bill.

THE TESTIMONY. (R., 57.)

Complainant was examined in his own behalf on October 12, 1892, and testified that he could not tell his exact age; that when he enlisted April 3, 1873, in the 4th Cavalry, his father told him he was 20 years old, which would make him 39. His father died in 1877, and his mother September 4, 1870; that they were engaged in the pawnbroker business at 916 Locust street, Philadelphia; that his mother was buried from his grandmother's house, 1603 Mt. Vernon street, Philadelphia, and he was present at the funeral; his brother and sister were also present. His father married again in the latter part of 1871 or fore part of 1872.

Denies all knowledge of any interest in any property here prior to August, 1891, when he received a letter from Birney & Birney, lawyers; was discharged from the Army June 12, 1881; first visited Washington after the death of his mother in 1883; came to secure a clerkship, did not succeed; was here about two weeks; was stationed at Fort Clark, Texas,

in November and December, 1874; had no information at Fort Clark or elsewhere of any proceeding to appoint a guardian for me in any suit in the District of Columbia. Knew the parties named as commissioners, but did not appear before them to have them select a guardian for me; they never mentioned the subject to me; knew Benjamin Evans (the guardian ad litem) but never appeared before him.

Last saw his sister in 1873, but heard from her in 1876. Do not know whether she is living or dead. (R. 56.)

R. 57, 58, details what efforts he made to get information as to his brother and sister, and believes them both to be dead.

Cross-examination. (R. 57.)

Lived in Philadelphia at the time of his enlistment. Lived previously at Andalusia, Bucks Co., Pa. Lived with my mother to the time of her death, and with my father and step-mother until I enlisted. In 1874 was in G troop. 4th Cavalry, Joseph Rendlebrook was captain. He is dead. Corresponded with my father for possibly six months. Received two letters from my sister in 1876, and answered them. Received a letter from my step-mother in 1877. Believe my parents lived in Washington. Cannot remember if I was living with them here during the war. Remember distinctly living in Andalusia, Pa., in 1863. Was then ten years old. That is my first recollection. Lived there with my mother. She was there in 1864. In July, 1874, our troop was stationed at Kerville, Texas. It went from there to Fort Clark, Texas. Never appeared before Captain Rendlebrook and the two other commissioners. Mr. Downey was a private in the troop in December, 1874. Think he is now at Indianapolis. Samuel J. Levy was the company's clerk. Don't know where he is. Did not go before these gentlemen at all. Had no conversation with them about a business matter or any suit in Washington.

Benjamin Evans was a member of the troop, a private, afterwards a corporal—just before he committed suicide.

Knew my mother had property in Philadelphia because I collected the rents. Did not know the estate was wound up there in 1873 or 1874. Instituted no inquiries. Received a letter in 1877 from my step-mother stating that my father was dead, that she hardly had money enough left to bury him and that there was nothing left. Never knew she had any property in Washington. Understood as a child when I lived in Andalusia that they had lived in Washington, but did not know that they had any property there. I presumed she owned the Andalusian property. Made no inquiries about it after my father's death. After receiving the letter from Birney & Birney in August, 1891, I came here and saw them. Mr. Armes came in. They informed me that the Government had condemned a lot of ground for a postoffice site and in examining the titles it was discovered that I was an heir to the property. Mr. Birney is no longer my counsel. He retired in November, 1891. In his letter of retiring "he said that—the substance of his letter was that, upon making examination he didn't feel like continuing." My brother was six or seven years older than I was.

TESTIMONY FOR DEFENSE.

Edward D. McLaughlin. Forty-eight years old. Attorney at law in Philadelphia; been in practice since November, 1865. Knew Sarah Jane Manson, represented her during her lifetime and settled up her estate after her death. She lived at Andalusia when I first knew her. She lived in Washington during the war. Attended to her business after 1865; probably from 1866 until the time of her death. She was here during the war; don't know at what time she moved from Washington. I was one of the witnesses to her will. It was drawn by Mr. Brewster. Her personal estate

was insolvent. All her real estate in Pennsylvania was sold by authority of the Orphan's Court to pay her debts, and proceedings were begun here to sell her Washington property. She was indebted to the firm of Poulson & Co. $5,592.73. It extended over a long series of years, fully ten years and probably longer. Mr. Poulson was her agent and had to advance her money in large sums. After exhausting all the estate in Pennsylvania, W. L. Manson requested the court to direct all the debts except Poulson & Co. and Burmeister to be paid in full, and that being done with the consent of those creditors he would pay the balance due them out of his own pocket. It amounted to $2,051.26, and he said he would stand in their shoes as a creditor to that amount. That was done and the auditor so reported to the court and the court confirmed the report.

I attended to the taking of the answer of the defendant Cecelia M. Manson. The three commissioners appointed to take her answer were in my office at the time. The commission was executed in my presence in my office.

The answer of Poulson, trustee, is in my handwriting and was signed by him in my presence in my office. The answer of W. H. Walters is also in my handwriting and his mark was placed there by him in my office.

I have not heard of Cecilia Manson for a number of years. She was married. I met her and she told me she was married. Have not seen Walters since he signed that paper.

I wrote Frederick L. Manson on November 3, 1874, notifying him of the proceedings to sell this property and in reply received this letter from him, dated November 12, 1874. (R. 95.)

Mr. Bell sent me this letter, dated on the same day, written to him from Fort Clark, Texas. (R. 95.)

I called W. L. Manson's attention to the boy's statement that he was over age and he informed me the boy was under age.

It was about 1870 I saw F. L. Manson last; judging from his appearance he was about 14 or 15.

There is an uncle of Frederick L. Manson, half-brother to his father, living in Philadelphia. His name is Taggart. I saw him the other day.

The estate in Pennsylvania was all exhausted before this bill was filed. (R. 90.)

Of the letters I received, the one from F. L. Manson was by due course of mail and the other came through Mr. Bell. (R. 93.) Letters, pp. 95, 96.

Counsel stipulated that P. Downey would testify that he served in the execution of the commission with the other two persons whose names are signed thereto; that Frederick L. Manson appeared before them and the guardian ad litem signed the same. (R. 118.)

JAMES W. BARKER. (R. 118.)

Knew Sarah Jane Manson; sold them the houses. She came there in 1862 and lived here until the property was released. She was here in 1863 and 1864. They were living in the house when the papers were released in 1865. They were bawdy houses. She lived there from the time they bought the houses.

CHARLES WALTER. (R. 123.)

Between 1861 and 1865 I held a confidential position under the Government, which I shall not disclose, and which caused me to have peculiar knowledge of houses of ill fame in the city. I knew Sarah Manson; she kept a house of ill fame on the east side of 12th, between C and D, the same square which has been taken for a postoffice. She was there in 1862 and 1863. I am not sure about 1864. She told me she was not married to Manson; never had a husband.

At that time it was always so, that everyone brought some man along for their protection. She said she never had any children. Think she remained here until the close of the war. Saw her after the war was over.

FILED OCTOBER 13, 1892. (R. 50.)

For and in consideration of services rendered me in the above entitled cause by Charles H. Armes, of Washington, D. C., as attorney at law, I hereby set over to him one-half of my interest in the above entitled cause and the money claimed therein. Washington, D. C., October 12, 1892.

F. L. MANSON.

DECREE OF SPECIAL TERM JULY 14, 1893. (R. 129.)

The court in its decree in favor of complainant based it upon—

> "it appearing to the court from an examination of the record in Equity Cause numbered 3796, referred to in this cause, that there was nothing set forth and contained therein to give the court jurtsdiction to sell the real estate described therein."

DECREE OF COURT OF APPEALS, D. C. (R. 142.)

From the decree of the court in special term, Duncanson appealed to the Court of Appeals, which reversed the decree below and dismissed the bill with costs.

ARGUMENT.

The court in Equity Cause 3796 had jurisdiction of the subject matter and persons of the defendants.

THE SUBJECT MATTER

was the usual decreeing of the sale of the real estate of a deceased debtor for the payment of debts.

The jurisdiction to sell the real estate acquired by infants either by descent or will, to pay the debts of their intestate or testator, is, moreover, conferred by special statutes.

Acts of Assembly of Maryland (Kilty's Statutes),

1785, Ch. 72, Sec. 5.

1789, Ch. 46, Sec. 2—

applies to lands within the State belonging to minors, residents of any other State. Such notice to be given as the chancellor may direct.

1790, Ch. 38—

applies where minors reside out of the State or the United States. Such notice to be given as the chancellor shall deem requisite and proper.

2 Bland, 306; Hammond *vs.* Hammond.

8 Pet. 128; Bank of U. S. *vs.* Ritchie.

JURISDICTION OF THE PERSON.

The appointment of guardian ad litem to the infant defendants gave the court jurisdiction of their persons.

The manner of appointment by commission was in conformity with the common law practice, and proper and usual in this District.

Cooper's Equity Pl. 108.

Bank of U. S. *vs.* Ritchie (*supra*).

1 Bland, 550; Snowden *vs.* Snowden.

The decree sought by the creditors' bill was not a personal decree against the infants, but was to subject real estate to the payment of debts, and the appointment of a guardian ad litem was sufficient to give jurisdiction.

103 U. S. 435, 440; Ins. Co. *vs.* Bangs.
132 U. S. 662, 671; Miller *vs.* Texas & Pac. RR.

Moreover, Poulson, the trustee, was a defendant, and represented the beneficiaries in the trust property. The children of Mrs. Manson were not necessary parties, in the absence of any charge of fraud or collusion between the trustee and those adversely interested.

124 U. S. 169; Vetterlein *vs.* Barnes.
132 U. S. 662, 671–2; Miller *vs.* T. & P. Rwy.
93 U. S. 155, 160; Kerrison *vs.* Stewart.

The court in Cause No. 3796, having general jurisdiction of the subject matter, had jurisdiction to decide the question whether the real estate described in the bill was liable for the payment of Mrs. Manson's debts.

To do this, it had to construe the deed under which she held and decide the legal effect of the trusts and powers set forth in it.

If there was any execution of the power of appointment by Mrs. Manson then, beyond question, the property was liable for her debts.

112 U. S. 334, 352; Brandies *vs.* Cochran.
126 Mass. 200; Clapp *vs.* Ingraham.

Whether Mrs. Manson's last will was or not an execution of the power, was a question which the court might have decided, and it is immaterial whether its decision should have been right or wrong.

The reason for the rule that the execution of the power by the donee subjects the property to liability for the donee's debts, is, that he is dealing with the property as his own and therefore it is liable for his debts.

And in all the cases of the ordinary execution of powers of appointment, the donor and donee are distinct persons and the deed or will declaring the power is generally voluntary and without pecuniary consideration from the grantee or donee. Hence, when the donee executes the power either in his own favor or that of some one else, he deals with the property as his own, and this he cannot do without subjecting it to liability for his debts, as a person cannot own property and hold it free from liability for his debts.

Now, apply this reason for the rule to the case before the court in Cause No. 3796.

Mrs. Manson bought the property with her own money. She was both the donor and donee of the power. Under the express trusts of the deed she was just as much the absolute owner of the property as if she had been a feme sole, holding the title in fee simple. She could sell it, and did sell part of it. She could mortgage it for borrowed money and pocket the money. She could exercise every possible act of dominion over it. Is it possible that under such circumstances, whether there was any technical execution of the power or not, she was not in a court of equity to be regarded as the owner of the property, and it liable for her debts? Certainly that was a question for the court to decide, and in subjecting the property to the payment of her debts it decided rightly.

If this court should decide that property thus held was not liable for the owner's debts, the result can readily be imagined.

In 5 Wall. 433, 441, the court said:

> "*It is a settled rule of law that the beneficial interest of the cestui que trust, whatever it may be, is liable for the payment of his debts. It cannot be so fenced about by*

inhibitions and restrictions as to secure to it the inconsistent characteristics of right and enjoyment to the beneficiary and immunity from its creditors."

See, also, 2 Crabb, Real Property, 743.
Williams, Real Property, 200.
Waite on Fr. Con., Secs. 39, 360.
23 Am. St. Rep., 215; Ghormley *vs.* Smith.
S. C. 139 Pa. St. 584.

A grantor cannot create a trust making himself the sole beneficiary for life, with a power to dispose of the trust property at death, so as to subject neither the income nor corpus of the estate to the payment of her debts.

The court having had jurisdiction of the person and subject matter, its decree was valid—the purchaser under it acquired a good title and the decree can not be attacked collaterally. It is solely a question of jurisdiction and not of error.

2 Pet. 162; Thompson *vs.* Tolmie.
(This is an important and leading case upon this subject.)
10 Pet. 449; Voorhees *vs.* The Bank.
13 Pet. 6; Whiting *vs.* The Bank.
2 How. 340; Grignon *vs.* Astor.
2 Wall. 210; Florentine *vs.* Barton.
102 U. S. 461, 464; Hall *vs.* Law.
104 U. S. 386; Davis *vs.* Gaines.
110 U. S. 183, 188; White *vs.* Crow.
136 U. S. 548; Thaw *vs.* Ritchie.
89 Am. Dec. 172 and note; Joyce *vs.* McAvoy.
S. C. 31 Cala. 273.
28 Md. 276; Cockey *vs.* Cole.
29 Md. 34; Schley *vs.* Mayor, etc.
62 Md. 33; Long *vs.* Long.
66 Md. 585; Newbold *vs.* Schloss.
3 McLean, 319; Nelson *vs.* Moore.

One of the incidents to the ownership of property is liability for debts.

And the utmost to which the law has gone in permitting enjoyment without liability is, where a donor or testator has provided for the receipt of income by the object of his bounty free from liability for debts, the interest of the debtor to cease upon insolvency or bankruptcy.

91 U. S. 716; Nichols *vs.* Eaton.

The doctrine of Nichols *vs.* Eaton was reaffirmed in 94 U. S. 523, 526, Hyde *vs.* Woods, which was the case of a seat in the San Francisco Stock Exchange, acquired under conditions imposed by the exchange that the proceeds of its sale should be applied to debts due other members of the exchange. It is manifest from the opinion in this case that the court recognized the law to be that a man could not so deal with his own property as to make an appropriation of it to the prejudice of his general creditors.

So in 141 U. S., 296, 317, 318, Potter *vs.* Couch, the court in deciding that a limitation over, in a will, in case of alienation, was void because repugnant to the estates devised, cites with approval the statement of the Illinois court:

> "Nor do we at all question the general principle that, upon the absolute transfer of an estate, the grantor cannot, by any restrictions or limitations contained in the instrument of transfer, defeat or annul the legal consequences which the law annexes to the estate thus transferred."

The proofs are insufficient to authorize the presumption of death of the alleged brother and sister of complainant, and the interest of the adult defendant unquestionably passed. The court below, in its opinion, states that the proofs of death would not justify a decree.

It is also apparent that the complainant had notice of the property and suit in 1874, and is guilty of laches.

The opinion of the Court of Appeals in this case is referred to as conclusive upon every point.

HENRY WISE GARNETT,
Solicitor for Appellee.

WM. F. MATTINGLY,
Of Counsel.